

# BY-LAWS OF AMERICAN CIVIL LIBERTIES UNION FOUNDATION

(A Type B New York Not-For-Profit Corporation)

## ARTICLE 1

### MEMBERS

**1.1. Conditions of Membership.** The members of the Corporation are the members of the Board of Directors of the American Civil Liberties Union, Inc., a District of Columbia non-profit corporation (hereafter "Union"). No additional members may be elected by the members or the directors at any annual or special meeting or otherwise. No membership nor any aspects of membership shall be transferable. Notwithstanding any provisions in the certificate of incorporation or by-laws of the Union, whether existing or future, the powers of the members of the Board of Directors of the Union to exercise the powers of members of this Corporation, including without limitation the power to elect or remove directors of this Corporation, may not be delegated to the Executive Committee of the Union or otherwise except as provided in Section 1.11 hereof.

**1.2. Annual Meeting.** An annual meeting of the members for the election of directors and the transaction of other business shall be held on a date and at a place, within or without the State of New York, fixed by the members or if no place has been so fixed, at the office of the Union in the State of New York. The time of the annual meeting shall be immediately after the adjournment of the October meeting of the Board of Directors of the Union.

**1.3. Annual Report of Directors.** (a) At each annual meeting of members, the Board of Directors shall present a report, verified by the President and Treasurer or by a majority of the directors or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board, showing in appropriate detail:

(i) the assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve month fiscal period terminating not more than six months prior to said meeting;

(ii) the principal changes in assets and liabilities, including trust funds, during said fiscal period;

(iii) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period;

(iv) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period; and

(v) the number of members of the Corporation as of the date of the report, and a statement of the place where the names and places of residence for the current members may be found. The annual report shall be filed with the records of the

Corporation, and either a copy or an abstract thereof shall be entered in the minutes of the proceedings of the annual meeting of members.

(b) the financial statements of the Corporation, certified by the Corporation's independent certified public accountant, shall be sent by the Corporation to each member upon request.

**1.4. Notices of Meetings of Members.** Notice of annual and any special meetings of members shall be in writing and, except as otherwise provided by law or these By-laws, may be signed by the President or Secretary, by a director specifically authorized to do so by the Board of Directors or by a member specifically authorized to do so by these By-laws. The notice shall state the place, date and hour of the meeting and, unless the meeting is an annual meeting of members, indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of any special meeting shall also state the purpose or purposes for which the meeting is called. A copy of the notice of any meeting shall be given, personally, by fax, by E-mail or by first-class or express mail, not less than ten (10) days nor more than fifty (50) days before the date of the meeting, to each member entitled to vote at such meeting, except as otherwise provided in Section 1.6 of these By-laws in the case of meetings called on written demand of members. Notices are deemed to have been given by fax or E-mail when sent. If mailed, such notice is given when deposited in the United States mail, with first-class or express mail postage thereon prepaid, directed to the member at her or his address as it appears on the record of members, or, if she or he shall have filed with the Secretary a written request that notices to her or him be mailed to some other address, then directed to her or him at such other address. When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the Board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each member of record on the new record date entitled to vote at such meeting.

**1.5. Waivers of Notice of Meetings of Members.** Notice of meeting need not be given to any member who submits a signed waiver of notice whether before or after the meeting. The attendance of any member at a meeting in person, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by her or him.

**1.6. Special Meeting for Election of Directors.** If for a period of one month after the date fixed by or under these By-laws for the annual meeting of members, or, if no date has been fixed, for a period of thirteen months after the formation of the Corporation or the last annual meeting, there is a failure to elect a sufficient number of directors to conduct the business of the Corporation, the Board of Directors shall call a special meeting of members for the election of directors. If such special meeting is not called

by the Board within two weeks after the expiration of such period or if it is so called but there is a failure to elect such directors for a period of two months after the expiration of such period, members entitled to cast 100 votes or ten percent of the total number of votes entitled to be cast in an election of directors, whichever is less, may, in writing, demand a call of a special meeting for the election of directors specifying the date and month thereof, which shall not be less than two nor more than three months from the date of such written demand. The Secretary of the Corporation upon receiving the written demand shall promptly give notice of such meeting, or, if she or he fails to do so within five business days thereafter, any member signing such demand may give such notice. The meeting shall be held at the place fixed in these By-laws or if not so fixed, at the office of the Corporation. At any such special meeting called on the demand of members, notwithstanding any other provision in these By-laws, the members attending in person and entitled to vote in an election of directors shall constitute a quorum for the purposes of electing directors, but not for the transaction of any other business.

**1.7. List of Members at Meetings.** A list or record of members entitled to vote, certified by the corporate officer responsible for its preparation, shall be produced at any meeting of the members upon the request therefor of any member who has given written notice to the Corporation, at least ten days prior to such meeting, that such request will be made. If the right to vote at any meeting is challenged, the inspectors of election, or the person presiding thereat, shall require such list or record of members to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list or record to be members entitled to vote thereat may vote at such meeting.

**1.8. Quorum.** Members entitled to cast one-third of the total number of votes entitled to be cast thereat shall constitute a quorum at a meeting of members for the transaction of any business, but the members present may adjourn the meeting to another time and place despite the absence of a quorum.

**1.9. Proxies.** No member entitled to vote at a meeting of members or to express consent or dissent without a meeting may authorize another person or persons to act for him by proxy. A member shall not sell his vote to any person for any sum of money or anything of value.

**1.10. Voting Entitlement.** For the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining members entitled to receive any distribution or the allotment of any rights or for the purpose of any other action by the members, the Board of Directors may, except in cases of meetings called on written demand of members as provided in Section 1.6 of these By-laws, fix in advance a date as the record date for any such determination of members. Such record date shall not be more than fifty (50) or less than ten (10) days before the date of the meeting. If no record date is fixed by the Board

of Directors, the record date for the determination of members entitled to vote at a meeting of members shall be at the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held. The record date for determining members for any other purpose shall be at the close of business on the day on which the resolution of the Board of Directors relating thereto is adopted. When a determination of members of record entitled to notice of or to vote at any meeting of members has been made as provided in this Section, such determination shall apply to any adjournment thereof, unless the Board of Directors fixed a new record date under this Section for the adjourned meeting.

**1.11. Vote of Members.** Each Member shall be entitled to cast one vote at meetings of the members. Directors shall be elected by member's votes cast at a meeting of the members. The only persons for whom a member may cast a vote for directors of the Corporation shall be members of the Executive Committee of the Union. Whenever any corporate action, other than the election of directors, is to be taken by vote of the members, it shall, except as otherwise expressly provided by law or by these By-laws, be authorized by the vote cast at a meeting of the members.

**1.12. Action by Members without a Meeting.** Wherever under law or these By-laws, the members are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by all the members.

**1.13. Term of Members.** Membership in the Corporation shall be terminated by a member's death, resignation or expulsion, removal or resignation, expulsion removal or expiration of term as a member of the Board of Directors of the Union. A member cannot resign as a member of the Corporation unless the member simultaneously resigns as a member of the Board of Director of the Union. The members shall have no power to expel or otherwise suspend or remove a member unless the member is simultaneously expelled or otherwise suspended or removed as a member of the Board of Directors of the Union.

## ARTICLE 2

### DIRECTORS

**2.1. Powers.** The Corporation shall be managed by the Board of Directors. The directors shall act only as a Board of Directors, and the individual directors shall have no power as such.

**2.2. Qualifications.** Each director shall be at least eighteen years of age and shall have such other qualifications as may be prescribed by the Certificate of Incorporation or these By-laws. Directors elected by the members must be directors of the Union and members of the Executive Committee of the Union.

2.3. **Number.** The number of directors of the Corporation shall be not less than three. The number of directors shall be the same as the number of directors of the Union who are voting members of the Executive Committee of the Union, plus the President of the Union and the Treasurer of the Corporation, each of whom shall have the same right to vote as any other director.

2.4. **Term.** Each director shall hold office until the annual meeting of members two years following her or his last election and until her or his successor shall have been elected and qualifies unless the director resigns or is removed as a director of the Corporation or as a member of the Executive Committee of the Union.

2.5. **Annual Meeting.** After each election of Directors, the Board of Directors shall hold its annual meeting for the purpose of organization, election of officers and the transaction of other business at its first meeting following the meeting of the members at which it was elected.

2.6. **Regular and Special Meetings.** Regular or any special meetings of the Board of Directors may be held at any place within or without the State of New York. Regular meetings of the Board of Directors may be held at such times as may be fixed from time to time by resolution of the Board of Directors. Special meetings of the Board of Directors may be called at any time by the President or the Secretary or as determined by the Board.

2.7. **Quorum.** Six members of the Board of Directors shall constitute a quorum for the transaction of business or of any specified item of business, but a majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of a meeting of the Board to another time or place shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

2.8. **Notice or Waiver of Notice of Meetings.** Regular meetings of the Board may be held without notice if the time and place is fixed by resolution of the Board. Any other regular meetings and all special meetings of the Board of Directors shall be held on notice to the directors. Notice thereof shall state the time and place of the meeting and shall indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of each special meeting of the Board shall be given to each director not later than noon, Eastern time, no more than ten days nor less than 24 hours prior to the meeting. Notices are deemed to have been given by fax or e-mail, when sent; by mail, when deposited with the first-class postage thereon prepaid in a post office or official depository under the exclusive care and custody of the United States Government: provided, however, that notices by mail must be mailed at least four business days prior to the meeting; by telegram at the time of filing; and by messenger at the time of delivery. Notices by fax, e-mail, mail, telegram or messenger shall be sent to each director at the address designated by her or him for the purpose or, if none has been so designated, at her or his last known address. Notice of

any meeting of the Board of Directors need not be given to any director who submits a signed Waiver of Notice, whether before, at or after the meeting, or who attends the meeting without protesting, prior thereto or at the commencement thereof, the lack of notice to him.

2.9. **Action by the Board.** Except as otherwise provided in Sections 2.12 and 2.13 of these By-laws, any reference in these By-laws to action to be taken by the Board of Directors shall mean such action taken by directors present in person at a meeting of the Board. Except as otherwise expressly required by law or by these By-laws, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board.

2.10. **Newly Created Directorships and Vacancies.** Newly created directorships resulting from either an increase in the number of directors or vacancies among the directors for any reason, including the removal of a director, or both, may be filled only by vote of the members.

2.11. **Removal of Directors.** Except as otherwise provided by law, any or all directors may be removed, with or without cause, by the vote of the members.

2.12. **Action by Board without a Meeting.** Any action required or permitted to be taken by the Board or any standing committee thereof may be taken without a meeting if all members of the Board or of the standing committee consent in writing to the adoption of a resolution authorizing the action. The resolutions and written consents thereto shall be filed with the minutes of the proceedings of the Board or committee.

2.13. **Telephonic Meetings.** Any one or more members of the Board of Directors or any standing committee thereof may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communication equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

## ARTICLE 3

### OFFICERS

3.1. **Officers.** The Board of Directors shall elect a President, one or more Vice Presidents, and a Secretary from among the Directors, and a Treasurer who must be a member of the corporation. Any two or more offices may be held by the same person, except the offices of President and Secretary or the offices corresponding thereto.

3.2. **President.** The President shall have general supervision over the affairs of the Corporation, subject, however, to the control of the Board of Directors. She or he shall, if present, preside

at all meetings of the members. She or he shall also, if present, preside at all meetings of the Board of Directors. She or he shall also perform such other duties as are provided for in these By-laws or as from time to time may be assigned to her or him by the Board of Directors.

**3.3. Vice President.** If the President is absent or if there is a vacancy in the office of President, then the Vice Presidents in the order designated by the Board of Directors, or in the absence of designation by the Board of Directors designated by the President, shall perform all the duties of the President and in so acting have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as may from time to time be assigned to her or him by the Board of Directors or by the President

**3.4. Treasurer.** The Treasurer shall collect or cause to be collected and shall keep or cause to be kept an account of all moneys expended for the use of the Corporation; shall deposit or cause to be deposited sums received by the Corporation in the name of the Corporation in such depositories as shall be approved by the Board of Directors; shall make regular reports to the Board of Directors of the finances of the Corporation; and shall perform such other duties as shall be directed by the Board of Directors or by the President. The Treasurer shall be ex officio a voting member of the Board of Directors and shall be chair of the Budget and Investment Committee of the Board. The funds, books and vouchers under the responsibility of the Treasurer shall at all times be subject to the inspection, supervision and control of the Board of Directors and the President.

**3.5. Secretary.** The Secretary, Assistant Secretary or any Secretary of the Meeting shall act as secretary of all meetings of the member of the Corporation, of the Board of Directors, and except as otherwise provided herein, of any committee of the Board and shall keep and sign or certify the minutes thereof in the proper book or books to be provided for that purpose. She or he shall see that all notices required to be given by the Corporation are duly given. She or he shall be responsible for the books, records and papers of the Corporation except as otherwise provided in Section 3.4 of these By-laws. She or he shall see that the reports, statements and other documents required by law are properly kept and filed. She or he shall perform such other duties as may from time to time be assigned to her or him by the Board of Directors or by the President.

**3.6 Executive Director.** The Executive Director shall be elected by the Board and shall be the Chief Executive Officer of the Corporation. She or he shall not be a member of the Board of Directors of the Corporation.

**3.7. Term.** The term of office of each officer of the Corporation (including any officer who may occupy an additional office created by the Board of Directors) shall be until the next annual meeting of the Board of Directors and until her or his successor has been elected or appointed and qualified.

**3.8. Removal.** Any officer may be removed by the Board, either with or without cause, at any time. Removal of an officer without cause shall be without prejudice to her or his contract rights, if any. The election of an officer shall not of itself create contract rights.

**3.9. Resignations.** Any officer may resign at any time, orally or in writing, by notifying the Board of Directors or the President or the Secretary of the Corporation. Such resignation shall take effect at the time therein specified and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

**3.10. Vacancies.** A vacancy in any office caused by death, resignation, removal, disqualification or other cause shall be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

## ARTICLE 4

### COMPENSATION OF DIRECTORS AND OFFICERS AND INDEMNIFICATION

**4.1. Compensation of Officers and Directors.** Neither any director nor any officer shall be compensated for any services to the Corporation.

**4.2. Indemnification of Officers and Directors.** In discharging their duties (including acting as trustees, directors or officers of other foundations, corporations, or entities at the request of the Corporation), directors and officers, and/or the legal representative of each, shall be indemnified by the Corporation to the fullest extent authorized by New York law, including but not limited to Section 721 of the New York Not-for-Profit Corporation Law as it may be amended or any comparable provision of any successor law. Specifically, such Directors and Officers shall be indemnified by the Corporation in all instances and to the extent described in Sections 722 and 723 (a) of the N-PCL, as they may be amended, or any comparable provision of any successor law, and may be indemnified in any specific case permitted by law, upon the opinion in writing of independent legal counsel to the Corporation that indemnification is proper in the circumstances because the applicable standard of conduct prescribed by law has been met by such Director or Officer.

**4.3 Indemnification of Other Agents and Employees.** The Corporation may, in the discretion of the Board of Directors, indemnify all corporate personnel, other than Directors and Officers, in the same manner and to the same extent as any Officer or Director.

## ARTICLE 5

### BOOKS, LIST AND RECORDS

5.1. **Books to Be Kept.** The Corporation shall keep, at its office in written form, correct and complete books and records of account and minutes of the proceedings of the members, the Board of Directors and any standing committee of the Board.

## ARTICLE 6

### FISCAL YEAR

6.1. **Fiscal Year.** The fiscal year of the Corporation shall be determined by resolution of the Board of Directors. In the absence of such a determination the calendar year shall be the fiscal year of the Corporation.

## ARTICLE 7

### CORPORATE SEAL

7.1. **Corporate Seal.** The Board of Directors may adopt a Corporate Seal, alter such seal at its pleasure and authorize it to be used by causing a facsimile to be affixed or impressed or reproduced in any other manner.

## ARTICLE 8

### OFFICE

8.1. **Office.** The office of the Corporation shall be located in the City and County of New York at such address as may from time to time be fixed by the Board of Directors.

## ARTICLE 9

### AMENDMENTS OF BY-LAWS

9.1. **Amendments by the Members.** These By-laws or any one or more of the provisions thereof may be amended or repealed or new By-laws adopted by the members.

9.2. **Amendments by Board of Directors.** Neither these By-laws nor any one or more of the provisions thereof may be amended or repealed nor new By-laws adopted by the Board of Directors.

## CERTIFICATE

The undersigned Secretary of the American Civil Liberties Union Foundation, a New York, not-for-profit corporation, certifies that the foregoing is a true copy of the By-laws of the Foundation, duly adopted by a two-thirds vote of all of the members of the Foundation, at a meeting duly called and held for that purpose on June 24, 2000, at 11:15 AM, a quorum being present at all times.

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[Name], Secretary