

# I.

## Overview

### The ACLU

The ACLU grew from the seeds of social activism in 1917 and was born in January 1920. Since its beginning, the ACLU has been a lightning rod for controversy, not least because the cases it has championed involve America's cherished civil rights.

Those rights have caused disagreements, fights and litigation from the beginning of our country, and will most probably continue to do so. Those rights include freedom of the press (Is press freedom unfettered or subject to restraints?) to free speech (Who has it? When can they use it? Are there any limitations on it?) to Equal Protection (Who should expect equal treatment? Who should not? What is equal treatment across economic, gender, age or racial lines?). The ACLU was established to and has inserted itself squarely in the midst of these and other constitutional and societal controversies.

Here is a sample of the many pros and cons about the Union<sup>2</sup>:

<b>A.</b> <b>Pro ACLU</b>	<b>B.</b> <b>Con ACLU</b>
<b>1. ACLU &amp; Defense of Individual Rights</b>	
“Over the years, the ACLU’s fortunes have waxed and waned because it tends to attract or lose members following specific actions it undertakes. That waxing and waning demonstrates the organization’s success at its sole endeavor, defending and preserving the individual freedoms granted through the Bill of Rights.	“The ACLU is trying to deprive other organizations of freedoms that it would insist upon for itself. Their work is not a defense of equality – it is an effort to impose a certain view of morality on the country by law...  This organization, despite its name and origins, is now committed to a version of civil rights that cannot help

<sup>2</sup> Reprinted with permission from Britannica's ProCon.org.

<p style="text-align: center;"><b>A.</b> <b>Pro ACLU</b></p>	<p style="text-align: center;"><b>B.</b> <b>Con ACLU</b></p>
<p>The ACLU has challenged literary censorship, segregation, cruel and unusual punishments, gender inequality, and violations of the right to privacy and freedom of religion. The ACLU is one of the informal checks and balances protecting individuals against tyranny.”</p> <p style="text-align: right;"><i>Judy Kutulas, PhD, Professor of History at St. Olaf College, Email to ProCon.org, Oct. 12, 2017</i></p>	<p>but erode traditional American civil liberties.</p> <p>The motto of the ACLU is, ‘Because Freedom Can’t Defend Itself.’ The irony today is that freedom needs to be defended from the ACLU.”</p> <p style="text-align: right;"><i>Carson Holloway, PhD, Associate Professor of Political Science, University of Nebraska, “The ACLU’s Betrayal of Civil Liberties,” Public Discourse, Mar. 26, 2015</i></p>

## 2. ACLU & Religion

<p>“Over the years, the ACLU has earned a reputation as the nation’s foremost protector of the rights of individuals to practice their religion, as well as the chief opponent of both state aid to religion and enforcement of any religious belief by law. We support the separation of church and state for the same reason the founders of our country did: to promote and protect religious freedom by keeping the government out...</p> <p>We believe that the place for religious displays, as with religious events and practices, is in the private sector – the home, the religious day school, or each person’s place of worship.</p> <p>Moreover, spirituality is undermined and religious symbols are trivialized when they are secularized in order to permit government endorsement.”</p>	<p>“From its inception... the ACLU can be characterized as hostile to the Christian faith. In 1925, it was the ACLU that challenged the Tennessee law banning the teaching of the theory of evolution as a fact in the taxpayer-funded public schools... Since the 1960s, the ACLU has been involved in the Supreme Court decisions which outlawed mandated school prayer, observation of religious holidays, and Bible reading in the public schools...</p> <p>Current positions of the ACLU reflect this strongly secular agenda that bristles with hostility toward biblical Christianity. The organization supports same-sex marriage and the right of ‘gays’ to adopt children; the support of abortion rights; and the elimination of ‘discrimination’ against LGBTQ people.”</p>
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<p style="text-align: center;"><i>American Civil Liberties Union (ACLU), “ACLU Briefing Paper Number 3 – Church and State,”lectlaw.com, (accessed Nov. 22, 2017)</i></p>	<p style="text-align: center;"><i>Steven Byas, Med Instructor, History &amp; Social Studies Education at Randall University, “ACLU Survey/Fundraising Letter Confirms Its Anti-Christian Bias,” thenewamerican.com, Apr. 19, 2016</i></p>
<p><b>3. ACLU &amp; Rights of the Minority</b></p>	
<p>“I want to recognize the ACLU for its commitment to protecting our civil liberties.</p> <p>You have a long and proud history of standing up to defend the freedoms guaranteed to us by the Bill of Rights and the Constitution...</p> <p>The ACLU seeks to prevent the ‘tyranny of the majority’ from destroying our fundamental liberties.”</p> <p style="text-align: center;"><i>Robert S. Mueller, III, JD, Former Director of the Federal Bureau of Investigation (FBI), Speech to the 2003 Inaugural ACLU Membership Conference, fbi.gov, June 13, 2003</i></p>	<p>“[A] problem occurs when the ACLU wins cases that force the ‘will’ or viewpoint of a minority onto the will of the majority. In so doing, the ACLU uses the judicial branch of the government to undermine the rights of the majority, and thus to undermine the very foundations of our democracy, namely majority rule. When courts continuously side with a minority they create a society where the minority gain power over the majority, thus becoming the tyranny of the minority. This is just the opposite of a democracy.”</p> <p style="text-align: center;"><i>Charles E. Steele, Industrial designer “Democratic Republic Majority Rule &amp; the ACLU Effect on Religious Freedom,” free2pray.info, June 29, 2015</i></p>
<p><b>4. ACLU &amp; Defense of Criminals</b></p>	
<p>“The ACLU doesn’t believe in ‘going soft’ on criminals.</p> <p>The ACLU supports just, reasonable law enforcement, even tough enforcement.</p>	<p>“In a 1981 speech before the California Peace Officers Assn., former Attorney General Ed Meese referred to the American Civil Liberties Union (ACLU) as a ‘criminals’ lobby.’ Lately, the American Criminal Liberties Union has been working harder than ever to justify its pejorative nickname... The ACLU</p>

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<p>However, we believe everyone is entitled to a fair trial and all rights of due process guaranteed by the Bill of Rights.”</p> <p style="text-align: center;"><i>American Civil Liberties Union “FAQ,” acluohio.org, (accessed Sep. 28, 2017)</i></p>	<p>has always advocated for the rights of criminals over their victims.”</p> <p style="text-align: center;"><i>Robert H. Knight, MA, Senior Fellow at the American Civil Rights Union, “The ACLU Goes Hunting in Montana,” Washington Times, June 24, 2017</i></p>
<p><b>5. ACLU &amp; Liberal Bias</b></p>	
<p>“Since the ACLU was founded in 1920, there have been 17 presidents in the White House. They’ve come and gone, some better – and a few much worse – than others.</p> <p>Throughout, the ACLU has remained steadfast in our nonpartisan mission of promoting civil rights and defending civil liberties – regardless of who’s in office... America needs the ACLU as an independent voice for civil rights and civil liberties, ready to meet challenges and seize opportunities to promote equal justice for all... Especially in times of tyranny, the ACLU’s liberty work is paramount.”</p> <p style="text-align: center;"><i>Carol Rose, JD, Executive Director of the ACLU of Massachusetts, “ACLU: Defending Liberty and Democracy in an Election Year,” The Docket, May 2016</i></p>	<p>“[T]he ACLU, which bills itself as ‘our nation’s guardian of liberty,’ would more accurately be described as the guardian of a far-left progressive agenda... It hails itself as a defender of the right of ‘everyone’ to free speech, but if you want to exercise that right while lawfully carrying a gun, don’t rely on the ACLU. It claims to defend religious freedom, but if you’re a baker whose religion does not allow you to bake a cake for a same-sex marriage celebration, you will find the ACLU on the other side of the courtroom representing the same-sex couple suing you.”</p> <p style="text-align: center;"><i>David E. Weisberg, JD, PhD, Civil litigator and appellate lawyer, “ACLU Proves Yet Again It’s a Guardian of Left-Wing Agenda,” thehill.com, Aug. 21, 2017</i></p>
<p><b>6. ACLU &amp; Communism</b></p>	
<p>“Throughout the organization’s history and particularly during the McCarthy era, the ACLU, its members, staff and founders have been accused of being Communists. The ACLU has no political</p>	<p>“In an effort to resist the conservative agenda of President Donald Trump, the ACLU organized everything from mass rallies to weekend house parties, where thousands were reported to have</p>

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<p>affiliations and makes no test of individuals’ ideological leanings a condition of membership or employment. Members and staff of the national ACLU and its affiliates may be Republicans, Democrats, Communists, Federalists, Libertarians, or members of any other political party or no party at all.</p> <p>What the ACLU asks of its staff and officials is that they consistently defend civil liberties and the Constitution.”</p> <p><i>American Civil Liberties Union (ACLU)</i> “FAQs: <i>Does the ACLU Have Communist Roots? Was Co-founder Roger Baldwin a Communist?”</i> <a href="http://aclu.org">aclu.org</a>, (accessed Sep. 11, 2017)</p>	<p>gathered over the weekend. Participants received a nine-point plan to resist established law and turn America into a network of ‘freedom cities’ that resist the Trump presidential agenda and the vote of the American people in the election of 2016. Uniting with Muslim congressman, Keith Ellison who also called for ‘mass rallies’ to stop Trump’s conservative agenda, the ACLU hopes to turn America Democratic ‘blue’ by forcing its liberal Socialistic and Communistic agenda upon all America.”</p> <p style="text-align: right;"><i>Stephen Flick, PhD,</i> <i>Executive Director of the Christian Heritage Fellowship,</i> <i>“ACLU Rattles Lifeless Bones of Communism”</i> <a href="http://christianheritagefellowship.com">christianheritagefellowship.com</a>, (accessed Dec. 1, 2017)</p>

**7. ACLU & Nazis’ Rights**

<p>“If the ACLU allows the state to suppress the free speech rights of white nationalists or neo-Nazi groups – by refusing to defend such groups when the state tries to censor them or by allowing them to have inadequate representation – then the ACLU’s ability to defend the free speech rights of groups and people that you like will be severely compromised...</p> <p>The ACLU is not defending white supremacist groups but instead is defending a principle – one that it must defend if it is going to be successful in</p>	<p>“For people who see themselves as anti-racists and anti-fascists first... the insistence that free speech will save us all rings somewhat hollow after this weekend [Unite the Right violence in Charlottesville, Aug. 2017]. Given limited energy and resources, maybe [the ACLU] defending the rights of violent bigots isn’t the noble choice in every case – especially when those bigots predictably use their platform to silence others. Free speech absolutists [such as the ACLU] insist that free speech is the foundation of anti-fascism. But maybe anti-fascism is the basis of true free speech – in which case, defending the speech of bigots can, at</p>
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<p>defending free speech rights for people you support.”</p> <p style="text-align: center;"><i>Glenn Greenwald, JD, Lawyer and Cofounding Editor of The Intercept, “The Misguided Attacks on ACLU for Defending Neo-Nazis’ Free Speech Rights in Charlottesville,” theintercept.com, Aug. 13, 2017</i></p>	<p>least in some cases, leave us all less free.”</p> <p style="text-align: center;"><i>Noah Berlatsky, MA, Contributing writer for The Atlantic, “The Case Against Free Speech for Fascists,” qz.com, Aug. 15, 2017</i></p>

**8. ACLU & War on Terror**

<p>“The ACLU does not undermine the War on Terror. The organization does, however, insist that government actions taken to protect Americans from terrorism be consistent with our Constitution and the rule of law.</p> <p>Acts of terrorism are, as the term itself indicates, intended to terrorize. Unfortunately, when people become fearful, they sometimes endorse measures that are ultimately self-defeating; the arrest of ‘suspicious’ people or the conduct of intrusive searches without probable cause, profiling individuals from certain ethnic groups based simply upon the way they look, ‘interrogation’ methods that are really torture outlawed by the Geneva conventions, and similar practices that are inconsistent with the 4th Amendment and with constitutional due process guarantees.</p> <p>Research confirms that these panicky measures ultimately make Americans less safe. Not only do they encourage lawless behavior by some law</p>	<p>“The ACLU has worked diligently to undermine America’s stance in what was formerly known as the ‘war on terror,’ and has even been willing to disseminate propaganda on behalf of our jihadist enemies.</p> <p>If you think this is hyperbole or an exaggeration, consider a video released by the ACLU earlier this month titled ‘Justice Denied: Voices from Guantanamo.’</p> <p>As you would expect, the video portrays Gitmo in the worst possible light. But it goes well beyond any semblance of rational criticism. As Sahab, al Qaeda’s media arm, could very well have produced it.</p> <p>The short video is pure anti-American propaganda, starring men who have dedicated their lives to the jihadist cause.”</p> <p style="text-align: right;"><i>Thomas Joscelyn, Senior Fellow at the Foundation for Defense of Democracies,</i></p>
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<p>enforcement officials, but they deepen divisions within the American population. Unconstitutional tactics create resentment and discourage cooperation with the authorities, and actually hinder the search for terrorists. Worse, as members of terrorist cells operating in hostile nations learn of American behaviors inconsistent with our own rules (Abu Ghraib comes to mind), they use those behaviors as centerpieces of their propaganda, as tools to recruit more terrorists, and as an excuse to mistreat Americans they capture.”</p> <p style="text-align: center;"><i>Sheila Suess Kennedy, JD, Professor and Director of Public Affairs Programs in the School of Public and Environmental Affairs at Indiana University-Purdue University Indianapolis, Email to ProCon.org, Oct. 17, 2017</i></p>	<p style="text-align: center;"><i>“Al Qaeda’s Civil Liberties Union,” weeklstandard.com, Nov. 17, 2009</i></p>
<p><b>9. ACLU &amp; Abortion</b></p>	
<p>“As a journalist who has written about women’s reproductive health issues for many years, I have had a front row seat at how the ACLU has continually stepped up at pivotal points to protect a woman’s right to privacy, especially her right to control her own body and fertility, and to respond to the demands of her own conscience.</p> <p>With the pace of threats of women’s access to pregnancy termination and birth control services showing no signs of abating, the ACLU’s role in defending</p>	<p>“[T]he American Civil Liberties Union (the ACLU is no friend of unborn babies) is suing the Food and Drug Administration to loosen the already-liberal regulations governing the chemical abortion drug [RU486]. The ACLU wants the abortion pill to be available by prescription in commercial pharmacies without a physician visit, leaving women to abort on their own... If successful, the lawsuit would end safeguards for women as pro-abortion advocates more widely promote these drugs for profit.</p>

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<p>those rights is arguably more urgent than ever before.”</p> <p style="text-align: center;"><i>Angela Bonavoglia, MSW, Author, journalist, and blogger, Email to ProCon.org, Nov. 6, 2017</i></p>	<p>Think about this for a moment. The ACLU and others are literally advocating for do-it-yourself abortion which can be perilous to women’s health.”</p> <p style="text-align: center;"><i>Bradley Mattes, MBS, President and CEO at the Life Issues Institute, “Silent, Deadly Abortion Tool Is Spreading,” lifeissues.org, Oct. 5, 2017</i></p>

**10. ACLU & Christmas**

<p>“This year, several groups are once again introducing the Christmas season with some heated and misleading military rhetoric... One particularly bizarre charge is that there is ‘a thorough and virulent anti-Christmas campaign.’ Without a shred of evidence, they pretend that there is an effort afoot to remove ‘God’ from the Declaration of Independence. Two groups even announced that they have assembled hundreds of lawyers to protect Christmas against this imaginary threat...</p> <p>First, Christmas displays — including nativity scenes — are perfectly acceptable at homes and churches. This religious expression is a valued and protected part of the First Amendment rights guaranteed to all citizens. Second, governments should not be in the business of endorsing religious displays.</p> <p>Religion does best when government stays out of the business of deciding which holidays and religions to promote.</p>	<p>“The ACLU is at it again. With an outrageous boldness that only they could muster, the ACLU has, once again, set their sights on Christmas celebrations. In their never-ending quest to completely eradicate all things religious from public life, the ACLU’s latest lawsuit is an all-out frontal attack on the freedom of speech and the free exercise of religion.</p> <p>Let me ask you—when did a children’s Christmas program become ‘an illegal activity’? When did the nativity story and Christmas songs become unconstitutional?</p> <p>This is the outrageous and dangerous charge the ACLU has leveled against a school district in Tennessee. A children’s Christmas program has been deemed to be an ‘illegal act’ because of the ACLU.</p> <p>Today the American Center for Law and Justice has launched a nationwide campaign entitled ‘Keep HIM in</p>
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<p>Religion belongs where it prospers best: with individuals, families and religious communities.</p> <p>And finally, as a seasonal greeting to all Christians: Merry Christmas from the ACLU!"</p> <p style="text-align: center;"><i>T. Jeremy Gunn, PhD, Director, ACLU Program on Freedom of Religion and Belief, "A Fictional 'War on Christmas'," USA Today, Dec. 18, 2005</i></p>	<p>Christmas.' We want to make sure that Jesus is at the center of this holiday. We want to keep HIM in the nativity scenes, keep HIM in the music, keep HIM as the focal point—and not allow the ACLU to operate as our nationwide censor."</p> <p style="text-align: right;"><i>American Center for Law and Justice, "The ACLU Targets Christmas," ACLJ.org, Nov. 28, 2006</i></p>

While this project contains facts and metrics about the many ACLU Supreme Court cases, the Union has always been involved in many other issues and cases that never made it to the Supreme Court, or that did, but were not accepted to be heard or decided. Some of these other issues include voting rights, the rights of detained citizens and non-citizens, and the rights of schoolchildren and the press. Another area of the ACLU's work not covered by this project or its SCOTUS cases are the many issues the ACLU settles by negotiation, lobbying or threats of litigation.

## **This Project**

This project began soon after I became involved with the ACLU when I joined the Board of the ACLU Foundation of Southern California in 1979. I knew little about the Foundation when I joined, given that I joined to offset the negative perception of my company's gold dealing with South Africa. That country was broadly seen as an international pariah at the time, given its Apartheid policies, which treated non-whites as second-class citizens or worse.

After I joined the Union, given that its printed material seemed more like marketing fluff, and given there was no "welcome to the board" information package, I started asking what the Union actually did. I was provided its 62-word bylaws, but those bylaws left many questions.

Those bylaws:

*"The objects of the American Civil Liberties Union shall be to maintain and advance civil liberties, including the freedoms of association, press, religion, and speech, and rights to the franchised, to due process of law, and to equal protection of the laws to all people throughout the United States and its possessions. The Union's objects shall be sought wholly without political partisanship."<sup>3</sup>*

I next asked Ira Glasser, the then-executive director of ACLU national, for a one-page description of what they did. He penned a draft for me, although it (on page \_\_) was never formalized by the organization. It remains the single best description of what the ACLU does that I have seen.

Armed with the ACLU bylaws and Glasser's one-pager, I decided to put together a modest, fact-based brochure on the organization setting out who they are, what they do, and an overview of various ACLU offices, its staffing, funding and resources.

In thinking about a marketing hook for the brochure, I decided to focus on the Union's victories and defeats in SCOTUS.

Because there didn't seem to be much interest in my brochure, I put it aside. The question, however, of how the ACLU did in SCOTUS gained traction, and although I was a bit surprised the ACLU never kept a list of all of its SCOTUS cases, I decided to collect and put them all together. Thus began my 40-year odyssey of collecting those cases and adding case

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<sup>3</sup> ACLU Constitution, Section 2

overviews and data related to those cases. That work ended with the ACLU's Centennial, on January 19, 2020.<sup>4</sup>

The facts and data in this project's work include:

- Win/Loss Record of the ACLU at SCOTUS by Count and Decade
- The ACLU's Wins and Losses at SCOTUS (Alphabetically by Case Title)
- Votes of Each Justice on Each ACLU SCOTUS Case from 1925 to 2019 (by Date)
- The 51 US Supreme Court Justices from 1925 to 2019; Their Terms; Votes on the ACLU's Cases; Related Information
- Presidents and the Favorable ACLU Voting Percentage of the Justice(s) They Appointed
- The Number and Percentage of Votes on the ACLU's Side by the Justice(s) Nominated by Each President

In addition, this work, on page \_\_, cross-references all the ACLU SCOTUS cases alphabetically. For example, if you wanted to find the case summary for *Abrams v. Johnson* (case number 2 alphabetically) in this work, the chart on page \_\_ shows that it can be found in date order in Vol. 2 as case number \_\_\_\_.

I hope you will find the statistics, data about the ACLU in SCOTUS, and the cross referencing in this work interesting, if not useful.

*Steven C. Markoff*

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<sup>4</sup> Date for establishment of ACLU from Samuel Walker's book *In Defense of American Liberties: A History of the ACLU*.