Appendix A

Methodology

The following methodology has been used in compiling this work:

1. The criteria for inclusion of an ACLU/SCOTUS case are when the ACLU was *involved* in the case when it went before the U.S. Supreme Court and the Court issued an opinion between January 19, 1920, and January 19, 2020, the first 100 years of the ACLU.

   "ACLU involvement" in a SCOTUS case includes when the ACLU was a party, filed (or is on) an amicus brief, and/or when an ACLU attorney argued the case or was listed on a brief in the case. An ACLU attorney's involvement includes an ACLU attorney being listed on a party's brief, whether or not the attorney's affiliation with the ACLU is noted on the brief itself.[1]

   Such involvement of an ACLU attorney also includes instances where the ACLU partnered with one or more outside attorneys not necessarily employed by the ACLU but who worked with the ACLU on the case. Involvement also includes cases where the ACLU has made public statements referencing the case as an ACLU case (because the ACLU has deeper records of its involvement in cases than is often available through SCOTUS documents and other public records).

   This criterion excludes cases where the ACLU was only involved when the case was before a lower court, and cases where the writ of certiorari was denied or granted but then later dismissed (meaning the [U.S. Supreme] Court never issued an opinion deciding the case itself), or where the ACLU's request to file an amicus was denied or withdrawn.

   Also excluded from this work are nine split decision *per curiam* cases.[2] Those cases are composed of one 3–3 and eight 4–4 votes. Those nine cases are excluded because it's not clear which justices voted on which side of those cases, and because the U.S. Supreme Court didn't come to a clear decision on any of them. A split decision has a similar effect as cert in those cases being denied. Those nine split decisions leave the lower court ruling in place.

   Cases are cited by the party names as listed in the U.S. Supreme Court's decision. Party names sometimes changed during the course of litigation.

   Occasionally, I have been told a particular SCOTUS case was an ACLU case but our research could not verify that claim. When that happened, such cases have not been listed in this work although it is possible with more research, we might have discovered other ACLU connections.

2. Win/Loss Definition

   This work defines "winning" or "losing" by whether or not the ruling of the U.S. Supreme Court was "with" or "against" the side the ACLU was on, even though in some instances the ACLU was on the "winning side" but some considered it an ACLU loss. Conversely, at times the Union was on the "losing side" but some considered the Union to receive a net benefit from the decision.

   Therefore, the above definition of wins and losses may not account for some nuanced or argued results.

   For example, this work records the case win/loss definitions count *Staats v. ACLU*, 422 U.S. 1030 (1975) as a loss for the ACLU because in *Staats*, the U.S. Supreme Court voted 8–0 against the side the ACLU was on. However, Ira Glasser, former executive director of the ACLU, considered the *Staats* decision a victory for the ACLU on the merits, because the practical effect of the case achieved the ACLU's goal in bringing it.

   Although such nuanced or argued effects about certain case results are interesting and important to some, second guessing or arguing about the outcome of such cases would add a subjectiveness that I chose to avoid.

   I have no reason to believe there are many such *Staats* cases, where a loss could reasonably be considered an ACLU win, or a win could be considered a loss. Even if there were, I don't believe the ACLU's win/loss ratio would be changed in any significant way.

   For example, if there were, say, a net difference of 20 such cases in this work, and if all those 20 cases increased or decreased the ACLU's wins or losses by that amount, its win ratio of 53.65% in its first 100 years[3] would only increase to 55.32% or decrease to 51.97%.[4]

   In the case of ties by the U.S. Supreme Court, where the lower court's ruling was affirmed by an equally divided U.S. Supreme Court (except the split *per curiam* cases), "winning" or "losing" is recorded as to whether or not the divided decision had the effect of ending the issue "with" or "against" the side the ACLU was on.

1 Attorney involvement includes an ACLU attorney who was noted on a brief before the U.S. Supreme Court but who may not have been noted as being affiliated with the ACLU. For example, Osmond K. Fraenkel, ACLU chief counsel 1954 to 1977; Melvin Wulf, ACLU legal director 1962 to 1977; or Steven R. Shapiro, ACLU associate legal director 1987 to 1993 and legal director 1993 to 2016 were listed on a party's brief before the U.S. Supreme Court, even though their ACLU affiliation was not always mentioned on the brief itself.

2 See footnote 1 on page 41

3 On page 9, 640 wins of 1,193 cases is 53.65%.

4 660 wins of 1,193 is 55.32%; 620 wins of 1,193 is 51.97%.