

March 8, 2016

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

By electronic mail (IRS.Commissioner@IRS.gov) and first class mail

Re: Second Supplement to Request for Examination of the National Rifle Association of America

Dear Commissioner Koskinen:

Citizens for Responsibility and Ethics in Washington (“CREW”) writes to further supplement its June 10, 2015 request that the Internal Revenue Service (“IRS”) commence an examination of the National Rifle Association of America (“NRA”), a non-profit organization exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code (“tax code”).¹ As CREW explained in the initial complaint, the NRA appears to have violated federal law by failing to disclose more than \$33.5 million it spent on political activity between 2008 and 2013. CREW filed a supplement to the complaint on January 13, 2016, explaining that the NRA’s 2014 tax return, filed subsequent to CREW’s initial complaint, failed to disclose another \$25 million the NRA spent on political activity in 2014.² Further investigation of the NRA’s activities indicates the NRA omitted yet another \$1 million in spending on political activity on its tax returns filed between 2008 and 2014. In those years, the NRA made numerous contributions to political organizations organized under section 527 of the tax code but failed to disclose any of them on its tax returns. In all, it appears the NRA failed to disclose nearly \$60 million in political spending. The IRS should consider all of these omissions in its examination of the NRA.

The NRA’s 2008-14 Political Contributions

Section 527 requires all political organizations governed by that section to file periodic reports with the IRS disclosing, among other things, contributors who donated a total of \$200 or more to the organization during a calendar year.³ The reports are filed on Form 8872 under penalty of perjury.⁴ Between 2008 and 2014, five section 527 political organizations reported

¹ CREW’s initial complaint, without exhibits, is attached as Exhibit A.

² CREW’s first supplement, without exhibits, is attached as Exhibit B. The first supplement further noted the NRA’s 2008-2013 tax returns show the group apparently made misrepresentations to the IRS about its spending on outside lobbyists, receipt of membership dues, and relationship with its political action committee.

³ 26 U.S.C. § 527(j).

⁴ IRS, Form 8872 (*available at* <https://www.irs.gov/pub/irs-pdf/f8872.pdf>).

receiving a total of \$1,031,550 in contributions from the NRA.⁵ Those reported contributions are:

<u>Organization</u>	<u>2008-2014 contributions⁶</u>
Republican Governors Association	\$651,532
Republican State Leadership Committee	\$174,751
Democratic Governors Association	\$116,197
Republican Attorneys General Association	\$79,070
Democratic Attorneys General Association	\$10,000

By year, the organizations reported receiving from the NRA: \$226,615 in 2014, \$212,183 in 2013, \$236,574 in 2012, \$138,983 in 2011, \$88,912 in 2010, \$73,438 in 2009, and \$54,845 in 2008.

The NRA's Representations to the IRS on its 2008-2014 Tax Returns

Despite these contributions that the five political organizations reported receiving from the NRA, the NRA failed to report this spending on political activity to the IRS on any of its tax returns filed under penalty of perjury between 2008 and 2014.

As a section 501(c)(4) tax-exempt organization, the NRA is required to file annual Form 990 tax returns. Tax-exempt organizations engaged in any "direct or indirect political campaign activities on behalf of or in opposition to candidates for public office" must both acknowledge conducting these activities on their tax returns and file a Schedule C describing the political activities and disclosing the amount spent on them.⁷ On Schedule C, tax-exempt organizations must disclose all spending on "direct and indirect political campaign activities,"⁸ defined as "[a]ll activities that support or oppose candidates for elective federal, state, or local public office."⁹ As part of this disclosure, tax-exempt organizations must report on Schedule C the name and address of "all section 527 organizations to which the filing organization made payments," and

⁵ The Form 8872s filed by the section 527 organizations are attached as Exhibit C.

⁶ For a handful of the contributions, disclosure reports filed with the IRS and the Federal Election Commission ("FEC") contain potentially inconsistent information about whether the contributions were made by the NRA itself or its political action committee, the National Rifle Association of America Political Victory Fund ("NRA-PVF"). For several contributions the section 527 organizations reported as having been received from the NRA itself, NRA-PVF reported making similar contributions at around the same time. Specifically, the Democratic Governors Association reported receiving four contributions totaling \$75,000 from the "NRA Institute for Legislative Action" between 2008 and 2010 for which there are potentially corresponding contributions from NRA-PVF. The Republican Governors Association also reported receiving \$25,000 from the "National Rifle Association" in June 2010 for which there is a potentially corresponding contribution from NRA-PVF. It is unclear if these are separate contributions or if errors were made by the NRA, NRA-PVF, or the recipients. Considering the NRA's repeated failures to disclose its political activities, the IRS should examine these contributions as part of its investigation.

⁷ Form 990, Part IV, Question 3; 2014 Instructions for Form 990, at 12; 2015 Instructions for Schedule C, at 1, 3.

⁸ Form 990, Schedule C, Part I-A, Lines 1-2; 2015 Instructions for Schedule C, at 3.

⁹ 2014 Instructions for Form 990, at 64.

amount paid by the filing organization to each section 527 organization.¹⁰ Tax-exempt organizations also must disclose on Schedule C the total amount of the organization's funds contributed to other organizations for section 527 exempt function political activities.¹¹

Contributions to political organizations are direct or indirect participation or intervention in political campaigns. "Contributions to political campaign funds . . . clearly violate the prohibition on political campaign intervention" for section 501(c)(3) organizations,¹² and political intervention that is prohibited for section 501(c)(3) organizations constitutes political activity for section 501(c)(4) groups like the NRA.¹³

The NRA filed Form 990 tax returns for each of the years 2008, 2009, 2010, 2011, 2012, and 2013.¹⁴ The NRA represented on each of the tax returns that it did not engage in any "direct or indirect political activities," and it did not file a Schedule C disclosing its political expenditures for any of these years.¹⁵ The NRA's treasurer and chief financial officer, Wilson H. Phillips, Jr., signed each of the tax returns under penalty of perjury.¹⁶

The NRA filed a Form 990 tax return for 2014 that also was signed under penalty of perjury by Mr. Phillips.¹⁷ The NRA acknowledged on this tax return engaging in political activities and filed a Schedule C that disclosed \$5,790,817 in spending on direct and indirect political campaign activities.¹⁸ On this Schedule C, however, the NRA affirmatively represented it contributed "0" to other organizations for section 527 political activities and left blank the section in which it is required to disclose the name and address of every section 527 organization to which it made payments and the amount contributed.¹⁹

¹⁰ Form 990, Schedule C, Part I-C, Line 5.

¹¹ *Id.*, Line 2; 2015 Instructions for Schedule C, at 4.

¹² IRS, Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations, FS-2006-17, February 2006; *see also, e.g.*, IRS website, The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations, March 5, 2014, *available at* [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501\(c\)\(3\)-Tax-Exempt-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501(c)(3)-Tax-Exempt-Organizations).

¹³ *See, e.g.*, Notice of Proposed Rulemaking, Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71535, 71536 (proposed Nov. 29, 2013) ("the IRS generally applies the same facts and circumstances analysis under section 501(c)(4)" as it does under section 501(c)(3)); Rev. Rul. 81-95 (citing examples of political intervention prohibited under section 501(c)(3) in determining political activity for section 501(c)(4) organizations); Priv. Ltr. Rul. 9652026 (October 1, 1996) ("[A]ny activities constituting prohibited political intervention by a section 501(c)(3) organization are activities that must be less than the primary activities of a section 501(c)(4) organization.").

¹⁴ These tax returns are attached as exhibits to CREW's initial complaint.

¹⁵ *Id.*, Part IV, Question 3.

¹⁶ *Id.*, Part II.

¹⁷ This tax return is attached as an exhibit to CREW's first supplement.

¹⁸ *Id.*, Schedule C, Part I-A, Line 2.

¹⁹ *Id.*; Schedule C, Part I-C, Lines 2, 5.

Violations

26 U.S.C. § 6652

Under the tax code, a tax-exempt organization that, without reasonable cause, fails to include any of the information required on a Form 990 tax return, or fails to provide the correct information, is liable for civil penalties.²⁰ On its 2008-2013 tax returns, the NRA should have acknowledged it engaged in political activity and reported on its Schedule C the contributions it made to the five section 527 organizations. On its 2014 tax return, the NRA also should have reported the \$226,615 in contributions it made to section 527 organizations. By failing to report this political activity on its 2008, 2009, 2010, 2011, 2012, 2013, and 2014 tax returns, the NRA appears to have violated 26 U.S.C. § 6652 and should be subject to monetary penalties.

26 U.S.C. § 7206

Under the tax code, any person who “[w]illfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter,” is guilty of a felony and subject to up to three years in prison and a fine of up to \$100,000.²¹ The money spent on political campaign activities a tax-exempt organization reports to the IRS on its Schedule C is material for several reasons, including: (1) the amounts reported can be used by the IRS to determine whether the organization is complying with its tax-exempt status; (2) the amount an organization expended on section 527 exempt activities in part determines exempt function taxes the organization must pay; and (3) accurate public disclosure of the amount of political activity conducted by tax-exempt organizations is critical to the objective of transparency that underlies the reporting required on Form 990.²²

The NRA’s Form 990 tax returns for 2008, 2009, 2010, 2011, 2012, 2013, and 2014 were signed by the organization’s treasurer and chief financial officer under written declarations that each was made under penalty of perjury and that Mr. Phillips had examined the returns and each was true, correct, and complete to the best of his knowledge. The tax returns, however, failed to disclose the NRA’s contributions to the section 527 organizations. As a result, it appears the tax returns were false and incorrect as to the material matter of the amount of money the NRA spent on political campaign activities in those tax years.

18 U.S.C. § 1001

Federal law further prohibits anyone from “knowingly and willfully” making “any materially false, fictitious, or fraudulent statement or representation” in any matter within the

²⁰ 26 U.S.C. §§ 6652(c)(1)(A)(ii), 6652(c)(4); *see also* 2012 Instructions for Form 990, at 7.

²¹ 26 U.S.C. § 7206(1).

²² IRS, Background Paper, Summary of Form 990 Redesign Process, August 19, 2008, at 1.

Hon. John Koskinen
March 8, 2016
Page 5

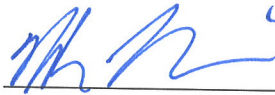
jurisdiction of the executive, legislative, or judicial branch.²³ The prohibition also includes anyone who “falsifies, conceals, or covers up by any trick, scheme, or device a material fact.”²⁴ Violations are punishable by up to five years in prison.²⁵ If the NRA knowingly and willfully concealed or falsely stated the amount of political campaign activity on its Form 990 tax returns for 2008, 2009, 2010, 2011, 2012, 2013, and 2014, it likely violated 18 U.S.C. § 1001.

Conclusion

CREW’s complaint and supplements describe repeated failures by the NRA to disclose its political activities on its tax returns. Based on this information, it appears the NRA failed to disclose almost \$60 million it spent on various types of political activity, a substantial violation of the tax code. The IRS should have commenced an examination of the NRA in light of CREW’s initial complaint and first supplement, and the additional issues explained in this letter should be considered in that investigation. Again, if the IRS finds the NRA made false or incomplete statements on its tax returns, it should take appropriate action, including but not limited to referring this matter to the Department of Justice for prosecution.

Thank you for your prompt attention to this matter.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

Encls.

cc: IRS-EO Classification

²³ 18 U.S.C. § 1001(a)(2).

²⁴ 18 U.S.C. § 1001(a)(1).

²⁵ 18 U.S.C. § 1001(a).