

January 13, 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: 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 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. Despite being made aware of these omissions, the NRA’s most recent tax return, filed subsequent to CREW’s complaint, failed to disclose another \$25 million the NRA spent on political activity in 2014. The NRA also does not appear to have corrected its 2008-2013 tax returns to date. In addition, further review of the NRA’s 2008-2013 tax returns shows the group appears to have made misrepresentations to the IRS about its spending on outside lobbyists, receipt of membership dues, and relationship with its political action committee, all of which appear to have been aimed at avoiding disclosure of its political and lobbying activity.² Accordingly, the IRS’s examination of the NRA should consider all of these issues.

The NRA’s Structure

CREW’s initial complaint explained that the NRA is a membership organization with a variety of internal divisions, subsidiaries, and related organizations that appears to conduct its political activity through two entities. The National Rifle Association of America Political Victory Fund (“NRA-PVF”) is the NRA’s separate segregated fund that serves as its political action committee and is organized under section 527 of the tax code. As a separate segregated fund, NRA-PVF is treated as a separate organization from the NRA and does not report its

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

² These additional apparent violations were first raised in a news report in the *New York Post*. Isabel Vincent and Melissa Klein, There’s Something Funny About the NRA’s Tax Filings ..., *New York Post*, January 3, 2016, (attached as Exhibit B and available at <http://nypost.com/2016/01/03/years-of-nra-tax-filings-are-loaded-with-apparent-falsehoods/>.)

activities on the NRA's annual Form 990 tax returns. The National Rifle Association Institute for Legislative Action ("NRA-ILA") is an internal division of the NRA, and represents itself as the "lobbying arm of the NRA." As a result, NRA-ILA's activities are reported on the NRA's tax returns.

The NRA's 2014 Political Activity

The Federal Election Campaign Act ("FECA") and Federal Election Commission ("FEC") regulations require any person making an independent expenditure "expressly advocating the election or defeat of a clearly identified candidate" to disclose the expenditure in periodic reports.³ In reports signed under penalty of perjury by NRA-ILA's fiscal officer, the organization reported to the FEC it made \$11,508,211 in independent expenditures in 2014.⁴ The FECA and FEC regulations further require any membership organization that makes communications to its members expressly advocating the election or defeat of a candidate to disclose those expenditures to the FEC in periodic reports.⁵ In reports also signed under penalty of perjury, NRA-ILA reported spending \$1,124,542 in communication costs in 2014.⁶ In total, the organization reported to the FEC making \$12,632,753 in expenditures expressly advocating the election or defeat of candidates for federal office.

The NRA made further political expenditures by paying for the fundraising and administrative costs of NRA-PVF, its political action committee. The NRA's annual financial statement for 2013 and 2014, prepared by independent auditors for the NRA's board of directors, disclosed the NRA paid \$18,548,482 of NRA-PVF's fundraising and administrative expenses in 2014.⁷

Between expenditures expressly advocating the election or defeat of candidates the NRA disclosed to the FEC and expenditures covering the fundraising and administrative expenses of its PAC, the NRA spent at least \$31,181,235 on political campaign activities in 2014.

The NRA's Representations to the IRS on its 2014 Tax Return

Despite these representations to the FEC and in its annual financial statement, the NRA told the IRS – also under penalty of perjury – that it spent only \$5.79 million on political campaign activities in 2014.

³ 52 U.S.C. § 30104(c), (g); 11 C.F.R. §§ 104.4(e)-(f), 109.10(b)-(d).

⁴ NRA-ILA, [FEC Candidate and Committee Viewer, Two-Year Summary, Independent Expenditures, 2014](http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do?candidateCommitteeId=C90013301&tabIndex=1), <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do?candidateCommitteeId=C90013301&tabIndex=1>.

⁵ 52 U.S.C. § 30101(9)(B)(iii); 11 C.F.R. §§ 100.134(a), 104.6, 114.3.

⁶ NRA-ILA, [FEC Candidate and Committee Viewer, Report Summaries, Communication Costs, 2014](http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do?candidateCommitteeId=C70000716&tabIndex=1), available at <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do?candidateCommitteeId=C70000716&tabIndex=1>; NRA-ILA, [FEC Reports Image Index, Communication Costs](http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do?candidateCommitteeId=C70000716&tabIndex=1), available at <http://docquery.fec.gov/cgi-bin/fecimg/?C70000716>.

⁷ McGladrey LLP, [National Rifle Association of America, Financial Statements as of December 31, 2014 and 2013 and Report Thereon](#) (excerpts attached as Exhibit C).

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.⁸ On Schedule C, tax-exempt organizations must disclose all spending on “direct and indirect political campaign activities,”⁹ defined as “[a]ll activities that support or oppose candidates for elective federal, state, or local public office.”¹⁰ When an advertisement explicitly advocates the election or defeat of an individual for public office, the expenditure is direct political campaign activity.¹¹ Indirect activities include payments for the administrative and fundraising costs of a political action committee and costs for communications to a group’s members that expressly advocate the election or defeat of a candidate.¹²

The NRA’s 2014 Schedule C, attached to its Form 990 tax return, disclosed \$5,790,817 in spending on direct and indirect political campaign activities, approximately \$25.4 million less than the \$31.1 million the NRA actually spent on political activity.¹³ The \$5.79 million reported is less than even the \$11.5 million NRA-ILA reported to the FEC spending on express advocacy.

Schedule C also requires separate disclosure of the “amount directly expended by the filing organization for section 527 exempt function activities.”¹⁴ Exempt function activities include “all activities that are directly related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization.”¹⁵ For section 501(c)(4) organizations like the NRA, however, indirect exempt function expenses do not need to be reported.¹⁶ In this narrower category, the NRA oddly reported spending \$13,342,588.¹⁷ It is unclear how the NRA calculated this amount, but it underscores that the NRA failed to disclose the actual amount it spent on political campaign activities. Even if this figure correctly reflects the NRA’s spending on section 527 exempt activities, the \$5.79 million the NRA reported for political campaign activities clearly omitted millions of dollars it spent in 2014.

The NRA’s treasurer and chief financial officer, Wilson H. Phillips, Jr., signed the tax return under penalty of perjury.¹⁸ After the NRA’s tax return is prepared and reviewed by an

⁸ Form 990, Part IV, Question 3; 2014 Instructions for Form 990, at 12; 2015 Instructions for Schedule C, at 1, 3.

⁹ Form 990, Schedule C, Part I-A, Lines 1-2; 2015 Instructions for Schedule C, at 3.

¹⁰ 2014 Instructions for Form 990, at 64.

¹¹ Rev. Rul. 2004-06; *see also* Election Year Issues, 2002 EO CPE Text at 349, 388; Treas. Reg. § 1.527-2(c)(1).

¹² Treas. Reg. § 1.527-2(c)(2).

¹³ NRA 2014 Form 990, Schedule C, Line 2 (excerpts attached as Exhibit D).

¹⁴ Form 990, Schedule C, Part I-C, Line 1; 2015 Instructions for Schedule C, at 1.

¹⁵ Treas. Reg. § 1.527-2(c)(1).

¹⁶ Treas. Reg. § 1.527-6(b)(1)-(2);

¹⁷ NRA 2014 Form 990, Schedule C, Part I-C, Lines 1, 3.

¹⁸ *Id.*, Part II.

external auditing firm, the NRA Board Audit Committee reviews it, and it is presented to the full Board of Directors before being filed with the IRS.¹⁹

The NRA's Representations to the IRS on its 2008-2013 Tax Returns

CREW's initial complaint explained that the NRA failed to disclose more than \$33.5 million it spent on political activity between 2008 and 2013. As the complaint noted, the NRA confirmed it failed to report those political expenditures, but claimed this was the result of a "clerical error."²⁰ Despite this admission, the NRA does not appear to have amended any of its tax returns from 2008 to 2013 to correct these errors and disclose the amounts it spent on political activity in those years.

Further reviews of the NRA's tax returns from 2008 through 2013 reveal several additional apparent misrepresentations.²¹ First, the NRA filed federal lobbying disclosures admitting to spending millions on outside lobbyists during those years, but told the IRS it did not spend any money on outside lobbyists. Tax-exempt organizations must provide on their tax returns a statement of functional expenses that discloses, among other things, fees paid to non-employees for a variety of services, including lobbying.²² On all of its 2008-2013 tax returns, the NRA asserted it spent no money at all on fees for outside lobbying.²³ The Lobbying Disclosure Act ("LDA") requires lobbying firms to register with the Clerk of the House of Representatives and the Secretary of Senate, disclose their clients, and report each quarter the amount they are paid by each client to lobby.²⁴ Despite the NRA's claims that it spent nothing on outside lobbying during 2008-2013, the LDA disclosures reported the NRA (including NRA-ILA) paid outside lobbyists \$510,000 in 2008, \$640,000 in 2009, \$600,000 in 2010, \$610,000 in 2011, \$640,000 in 2012, and \$640,000 in 2013.²⁵

Second, the NRA asserted in one part of its tax returns that it did not receive any membership dues, even though elsewhere in those returns it acknowledged receiving hundreds of millions of dollars in dues. One part of the Form 990 tax return asks a series of questions designed to establish whether the organization needs to file certain schedules. For example, one

¹⁹ *Id.*, Part VI, Section B, and Schedule O.

²⁰ Alan Berlow, *The NRA's Brazen Shell Game With Donations*, *Yahoo News*, April 21, 2015 (attached as Exhibit E and available at <https://www.yahoo.com/politics/the-nras-deceptive-shell-game-with-donations-a-116744915796.html>); Stephen Gutowski, *NRA: Accusations in Yahoo News Report Are False*, *Washington Free Beacon*, May 29, 2015 (attached as Exhibit F and available at <http://freebeacon.com/issues/nra-accusations-in-yahoo-news-report-are-false/>).

²¹ Vincent and Klein, *New York Post*, January 3, 2016.

²² Form 990, Part IX, Line 11d.

²³ NRA 2008 Form 990 (excerpts attached as Exhibit G); NRA 2009 Form 990 (excerpts attached as Exhibit H); NRA 2010 Form 990 (excerpts attached as Exhibit I); NRA 2011 Form 990 (excerpts attached as Exhibit J); NRA 2012 Form 990 (excerpts attached as Exhibit K); NRA 2013 Form 990 (excerpts attached as Exhibit L) (collectively, "NRA 990 tax returns").

²⁴ 2 U.S.C. §§ 1603, 1604.

²⁵ Open Secrets, *National Rifle Association, Lobbying, Summary*, available at <https://www.opensecrets.org/lobby/clientsum.php?id=D000000082>.

question asks if the organization engaged in any political activity, and provides that if the answer is “yes,” the organization must file Schedule C and report that spending.²⁶ As noted, the NRA answered “no” to this question for all of its 2008-2013 tax returns. Another question asks if the group is organized under sections 501(c)(4), 501(c)(5), or 501(c)(6) and received membership dues or assessments.²⁷ If the organization answers “yes,” it also must file a Schedule C and answer questions about certain lobbying expenses.²⁸

In this section of its tax returns filed between 2008 and 2013, the NRA represented it did not receive membership dues or assessments and did not have to file a Schedule C.²⁹ However, another part of Form 990 requires the filer to provide a statement of revenue disclosing the sources of its income.³⁰ In this section of its 2008-2013 tax returns the NRA acknowledged receiving hundreds of millions of dollars in membership dues. For example, the NRA asserted it received more than \$175 million in dues in 2013 and nearly \$108 million in 2012.³¹ The NRA’s claim that it did not receive any membership dues in the other section of its tax returns appears to have been part of its effort to avoid filing a Schedule C for any of those years, which would have required the group to disclose more information about its political and lobbying spending.

Third, the NRA failed to disclose on its tax returns that its political action committee, NRA-PVF, was a related organization. Groups affiliated with other organizations must disclose those relationships on Schedule R of their tax returns.³² Between 2008 and 2013, however, the NRA did not identify NRA-PVF as a related tax-exempt organization on its Schedule R, despite elsewhere noting its existence in the NRA’s corporate structure.³³

Accordingly, it appears the NRA has not corrected its failure to disclose its political activity on its 2008-2013 tax returns, and those tax returns appear to include further misrepresentations about its lobbying activities, membership dues, and relationship with NRA-PVF.

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

²⁶ Form 990, Part IV, Line 3.

²⁷ *Id.*, Line 5.

²⁸ *Id.*, Line 5 and Schedule C, Parts III-A, III-B.

²⁹ NRA 990 Tax Returns, Part IV, Line 5. The language of this question was different in 2008 and 2009 than it has been from 2010 to the present. Based on the earlier version of the question, the NRA may have had a basis to argue that it could reasonably assert it had no membership dues for 2008 and 2009. For 2010-13, however, the new language of the question clearly should have resulted in the NRA answering “yes.”

³⁰ Form 990, Part VIII, Lines 1b and 2.

³¹ NRA 990 Tax Returns, Part VIII, Lines 1b and 2.

³² Form 990, Part IV, Line 34 and Schedule R.

³³ NRA 990 Tax Returns, Schedules O and R.

information, is liable for civil penalties.³⁴ The NRA should have reported on its 2014 Schedule C all of its spending on NRA-ILA's independent expenditures and costs for communications to members that expressly advocated the election or defeat of candidates for public office, as well as its payment of NRA-PVF's administrative and fundraising expenses. Instead of reporting the more than \$31.1 million it spent on these direct and indirect political campaign activities, the NRA only reported spending \$5.79 million. As a result, the NRA appears to have violated 26 U.S.C. § 6652 and should be subject to monetary penalties.

On its 2008-2013 tax returns, the NRA also failed to disclose its political campaign spending and does not appear to have corrected those returns. In addition, on those same returns, the NRA failed to report its spending on outside lobbyists, falsely asserted it did not receive any membership dues, and did not disclose its relationship with NRA-PVF. As all of this information must be provided on Form 990 tax returns, the NRA appears to have further violated 26 U.S.C. § 6652.

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 \$100,000.³⁵ 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 990.³⁶

The NRA's 2014 Form 990 tax return was signed by the organization's treasurer and chief financial officer under a written declaration that it was made under penalty of perjury and that Mr. Phillips had examined the return and it was true, correct, and complete to the best of his knowledge.³⁷ That tax return, however, was false and incorrect as to the material matter of the amount of money the NRA spent on political campaign activity in 2014.

The NRA filed its 2014 tax return after *Yahoo News* reported the NRA failed to disclose its political spending in its 2008-2013 tax returns, after CREW filed its initial complaint, and after the NRA claimed the false and incorrect tax returns were the result of a clerical error. As a result, the NRA should have been particularly vigilant in its disclosures on its 2014 tax return.

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

³⁵ 26 U.S.C. § 7206(1).

³⁶ IRS, Background Paper, Summary of Form 990 Redesign Process, August 19, 2008, at 1.

³⁷ NRA 2014 Form 990, Part II.

This tax return also was prepared by a sophisticated outside accounting firm, reviewed by the audit committee of the NRA board, and presented to the board itself before filing. Considering these warnings and safeguards, it appears likely the NRA's failure to accurately report its political campaign spending was voluntary and intentional and thus a violation of 26 U.S.C. § 7206.

The NRA's false representations on its 2008-2013 tax returns about its spending on outside lobbying, membership dues, and relationship with NRA-PVF also were material to the objective of transparency (including the public's understanding of the NRA's activities and funding sources), as well as to the determination of whether certain membership dues are non-deductible. If those representations also were voluntary and intentional, the NRA may have further violated 26 U.S.C. § 7206.

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 jurisdiction of the executive, legislative, or judicial branch.³⁸ The prohibition also includes anyone who "falsifies, conceals, or covers up by any trick, scheme, or device a material fact."³⁹ Violations are punishable by up to five years in prison.⁴⁰ If the NRA's false representation about its spending on political campaign activity on its 2014 tax return was made knowingly and willfully, the NRA may have violated 18 U.S.C. § 1001. Similarly, if the NRA's false representations on its 2008-2013 tax returns about its spending on outside lobbying, membership dues, and relationship with NRA-PVF were made knowingly and willfully, the NRA further may have violated 18 U.S.C. § 1001.

Conclusion

Last year, after a news report pointed out the NRA's failure to disclose any political spending on its 2008-2013 tax returns and after CREW filed its initial complaint, the NRA claimed the omissions were merely a clerical error. Yet on its 2014 tax return, the NRA still failed to report another \$25 million on political spending. Nor has the NRA corrected its 2008-2013 tax returns, and a further review of those returns shows the group appears to have made more misrepresentations to the IRS, all of which appear to have been aimed at minimizing or hiding the group's political and lobbying spending. These multiple and repeated disclosure failures make it increasingly difficult to believe these errors are innocent. The IRS should have commenced an examination of the NRA in light of CREW's initial complaint, and the additional issues explained in this letter should be considered in that investigation. Again, if the IRS finds

³⁸ 18 U.S.C. § 1001(a)(2).

³⁹ 18 U.S.C. § 1001(a)(1).

⁴⁰ 18 U.S.C. § 1001(a).

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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