

June 10, 2015

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

**By facsimile (without exhibits) (202) 622-5756 and first class mail**

Re: Request for Examination of the National Rifle Association of America

Dear Commissioner Koskinen:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests 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”), to determine if it violated federal law by failing to disclose more than \$33.5 million the NRA spent on political activity between 2008 and 2013.<sup>1</sup>

### The NRA’s Structure

The NRA is a membership organization with a variety of internal divisions, subsidiaries, and related organizations.<sup>2</sup> The NRA 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.<sup>3</sup> As a separate segregated fund, NRA-PVF is treated as a separate organization from the NRA and does not report its activities on the NRA’s tax returns.<sup>4</sup>

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.”<sup>5</sup> As a result, NRA-ILA’s activities are reported on the NRA’s Form 990 tax returns.<sup>6</sup>

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<sup>1</sup> CREW submits this letter in lieu of Form 13909; a copy is being sent to the Dallas office. These apparent violations were first raised in a news report published by *Yahoo News*. Alan Berlow, The NRA’s Brazen Shell Game With Donations, *Yahoo News*, April 21, 2015, attached as Exhibit A and available at <https://www.yahoo.com/politics/the-nras-deceptive-shell-game-with-donations-a-116744915796.html>.

<sup>2</sup> NRA 2012 Form 990, Schedule O (excerpts attached as Exhibit B).

<sup>3</sup> *Id.*; NRA-PVF, FEC Form 1, Statement of Organization, Amended, March 16, 2009, available at <http://docquery.fec.gov/pdf/408/29991757408/29991757408.pdf>.

<sup>4</sup> 26 U.S.C. § 527(f)(3).

<sup>5</sup> NRA website, About the NRA Institute for Legislative Action page, available at <https://www.nraila.org/about/>.

<sup>6</sup> *See, e.g.*, NRA 2012 Form 990, Part III, Line 4c (reporting more than \$17 million in NRA-ILA program services); *id.* at Part VII (listing NRA-ILA officials as NRA officers and employees); *id.* at Schedule R (not listing NRA-ILA as a related tax-exempt organization).

### The NRA's Political Activity

The Federal Election Campaign Act (“FECA”) and Federal Election Commission (“FEC”) regulations require any person making an independent expenditure to disclose the expenditure to the FEC in periodic reports.<sup>7</sup> Independent expenditures are defined as expenditures “expressly advocating the election or defeat of a clearly identified candidate.”<sup>8</sup> In reports signed under penalty of perjury by NRA-ILA’s fiscal officer, the organization reported to the FEC it made \$7,448,385 in independent expenditures in 2012.<sup>9</sup> More than half of those independent expenditures were spent opposing Barack Obama or supporting Mitt Romney in the presidential race.<sup>10</sup>

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.<sup>11</sup> In reports signed under penalty of perjury by NRA-ILA’s fiscal officer, the organization reported to the FEC spending \$1,222,353 in communication costs for 2008, \$1,089,438 for the 2010 election cycle, \$1,159,929 for the 2012 election cycle, and \$39,705 for 2013.<sup>12</sup>

In total, between 2008 and 2013 NRA-ILA reported to the FEC under penalty of perjury making \$10,959,810 in expenditures expressly advocating the election or defeat of candidates for federal office.<sup>13</sup>

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 statements for 2008-2013, prepared by independent auditors for the NRA’s board of directors, disclosed the NRA pays NRA-PVF’s fundraising and administrative expenses. The NRA paid \$4,376,378 for the fundraising and administration of its political action committee in 2008, \$3,759,979 for these costs in 2009, \$5,359,183 in 2010, \$569,996 in 2011, \$4,970,338 in 2012, and \$3,512,405 in 2013.<sup>14</sup> In total, the NRA spent \$22,548,279 on these expenses for its political action committee during those six years.

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<sup>7</sup> 2 U.S.C. § 434(c), (g); 11 C.F.R. §§ 104.4(e)-(f), 109.10(b)-(d).

<sup>8</sup> 2 U.S.C. § 431(17); 11 C.F.R. § 100.16.

<sup>9</sup> NRA-ILA, FEC Candidate and Committee Viewer, Two-Year Summary, Independent Expenditures, 2012, <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do?candidateCommitteeId=C90013301&tabIndex=1>.

<sup>10</sup> Open Secrets, NRA Institute for Legislative Action, Targeted Candidates, 2012, available at <https://www.opensecrets.org/outsidespending/recips.php?cmte=C90013301&cycle=2012>.

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

<sup>12</sup> NRA-ILA, FEC Candidate and Committee Viewer, Two-Year Summary, Communication Costs, 2008, 2010 and 2012, available at <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do?candidateCommitteeId=C70000716&tabIndex=1> NRA-ILA, FEC Reports Image Index, Communication Costs, available at <http://docquery.fec.gov/cgi-bin/fecimg/?C70000716>.

<sup>13</sup> The NRA-ILA or other parts of the NRA also may have engaged in state or local political activity.

<sup>14</sup> McGladrey & Pullen, LLP, National Rifle Association of America, Financial Statements as of December 31, 2009 and 2008 and Report Thereon (excerpts attached as Exhibit C); McGladrey & Pullen, LLP, National Rifle Association of America, Financial Statements as of December 31, 2011 and 2010 and Report Thereon (excerpts

Between the expenditures expressly advocating the election or defeat of candidates for federal office the NRA disclosed to the FEC, and paying the fundraising and administrative expenses of its PAC, the NRA spent at least \$33,508,089 on political campaign activities from 2008 and 2013.

### **The NRA's Representations to the IRS**

Despite these representations to the FEC and in its annual financial statements, the NRA told the IRS – also under penalty of perjury – that it spent nothing on political campaign activities between 2008 and 2013.

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.<sup>15</sup> “Political campaign activities” are defined as “[a]ll activities that support or oppose candidates for elective federal, state, or local public office.”<sup>16</sup> When an advertisement explicitly advocates the election or defeat of an individual for public office, the expenditure is direct political campaign activity.<sup>17</sup> 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.<sup>18</sup>

The NRA filed Form 990 tax returns for each of the years 2008, 2009, 2010, 2011, 2012, and 2013.<sup>19</sup> The NRA’s treasurer and chief financial officer, Wilson H. Phillips, Jr., signed each of the tax returns under penalty of perjury.<sup>20</sup> The NRA represented on each of the tax returns it did not engage in any “direct or indirect political activities,” and did not file a Schedule C disclosing its political expenditures for any of these years.<sup>21</sup>

The NRA’s tax returns are prepared and/or reviewed by an accounting firm that describes itself as “a leading provider of . . . tax and consulting services.”<sup>22</sup> After the NRA’s tax return is

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attached as Exhibit D); McGladrey & Pullen, LLP, National Rifle Association of America, Financial Statements as of December 31, 2013 and 2012 and Report Thereon (excerpts attached as Exhibit E).

<sup>15</sup> Form 990, Part IV, Question 3; 2014 Instructions for Form 990, at 12; 2014 Instructions for Schedule C, at 1, 3.

<sup>16</sup> 2014 Instructions for Form 990, at 64.

<sup>17</sup> Rev. Rul. 2004-06; *see also* Election Year Issues, 2002 EO CPE Text at 349, 388; Treas. Reg. § 1.527-2(c)(1).

<sup>18</sup> Treas. Reg. § 1.527-2(c)(2).

<sup>19</sup> NRA 2008 Form 990 (excerpts attached as Exhibit F); NRA 2009 Form 990 (excerpts attached as Exhibit G); NRA 2010 Form 990 (excerpts attached as Exhibit H); NRA 2011 Form 990 (excerpts attached as Exhibit I); NRA 2012 Form 990; NRA 2013 Form 990 (excerpts attached as Exhibit J) (collectively, “NRA 990 tax returns”).

<sup>20</sup> NRA 990 tax returns, Part II.

<sup>21</sup> *Id.*, Part IV, Question 3.

<sup>22</sup> *Id.*, Part II; Part VI, Section B, and Schedule O; McGladrey LLP website, Who We Are page, *available at* [http://mcgladrey.com/content/mcgladrey/en\\_US/who-we-are.html](http://mcgladrey.com/content/mcgladrey/en_US/who-we-are.html).

prepared and reviewed, the NRA Board Audit Committee reviews it before it is filed with the IRS.<sup>23</sup>

In April 2015, *Yahoo News* published a report describing the NRA's political activities and its representations to the IRS.<sup>24</sup> The NRA subsequently provided *Yahoo News* with a response.<sup>25</sup> According to the updated report, the NRA confirmed it failed to report its political expenditures for 2008 through 2013, but claimed this was the result of a "clerical error."<sup>26</sup> The NRA further contended that while "a box was erroneously left unchecked . . . the assertion that this represents fraud on the NRA's part is absurd, as is the suggestion that the NRA would file publicly-available documents that deliberately attempt to conceal any of our activities."<sup>27</sup> In the updated report, however, the NRA did not address its failure to file any Schedule Cs, and did not assert it has or intends to amend its Form 990 tax returns.<sup>28</sup> The NRA's explanation also strains credulity. The NRA is a sophisticated entity that only filed its tax returns after multiple layers of internal and external review, making it difficult to believe a clerical error is responsible for the NRA's failure to report its political expenditures for at least six years.

### 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.<sup>29</sup> NRA-ILA's independent expenditures and costs for communications to members that expressly advocated the election or defeat of candidates for public office are political expenditures the NRA should have reported on its Form 990 tax returns. Similarly, the NRA's payment of NRA-PVF's administrative and fundraising expenses are political expenditures the NRA should have reported on its Form 990 tax returns. Contrary to its assertion in response to the *Yahoo News* report, the NRA did not simply leave a box unchecked; it also failed to file a Schedule C with any of its Form 990 tax returns between 2008 and 2013. The NRA further has not asserted it has or intends to amend the tax returns it admitted are erroneous.

By failing to report the amount it spent on political campaign activities on its Form 990 tax returns for 2008, 2009, 2010, 2011, 2012, and 2013, and by failing to amend the erroneous tax returns, the NRA violated 26 U.S.C. § 6652 and should be subject to monetary penalties.

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<sup>23</sup> NRA 990 tax returns, Part VI, Section B, and Schedule O.

<sup>24</sup> Berlow, *Yahoo News*, April 21, 2015.

<sup>25</sup> *Id.* ("update" at conclusion of report).

<sup>26</sup> *Id.* (quoting NRA spokeswoman Jennifer Baker). The NRA made the same claim in another news report. See Stephen Gutowski, *NRA: Accusations in Yahoo News Report Are False*, *Washington Free Beacon*, May 29, 2015, attached as Exhibit K and available at <http://freebeacon.com/issues/nra-accusations-in-yahoo-news-report-are-false/>.

<sup>27</sup> Berlow, *Yahoo News*, April 21, 2015 (quoting Baker).

<sup>28</sup> *Id.*

<sup>29</sup> 26 U.S.C. §§ 6652(c)(1)(A)(ii), 6652(c)(4); see also 2012 Instructions for Form 990, at 7.

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.<sup>30</sup> 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.<sup>31</sup>

The NRA’s Form 990 tax returns for 2008, 2009, 2010, 2011, 2012, and 2013 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.<sup>32</sup> As the NRA now admits, 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.

In response to the *Yahoo News* report, the NRA claimed the false and incorrect tax returns were the result of a clerical error and denied any concealment was deliberate. The NRA, however, is a large and sophisticated entity that regularly files complex tax and campaign finance documents. The NRA also uses a leading accounting firm to prepare and/or review its tax returns and to conduct annual audits of its financial records. Moreover, the audit committee of the NRA’s board reviewed all the tax returns before they were filed, and the NRA’s treasurer and chief financial officer signed each of the tax returns under penalty of perjury.

These facts undermine the NRA’s implausible contention that its false representations of its tax returns were the result of a clerical error. If the NRA instead voluntarily and intentionally filed false tax returns despite knowing its legal duties, it likely 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.<sup>33</sup> The prohibition also includes anyone who “falsifies, conceals, or covers up by any trick, scheme, or device a material fact.”<sup>34</sup>

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<sup>30</sup> 26 U.S.C. § 7206(1).

<sup>31</sup> IRS, Background Paper, Summary of Form 990 Redesign Process, August 19, 2008, at 1.

<sup>32</sup> NRA 990 tax returns, Part II.

<sup>33</sup> 18 U.S.C. § 1001(a)(2).

<sup>34</sup> 18 U.S.C. § 1001(a)(1).

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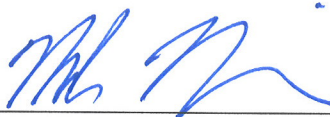
Violations are punishable by up to five years in prison.<sup>35</sup> As noted, the facts call into question the NRA's contentions that the false representations in its tax returns were the result of a clerical error and not deliberate. If the NRA instead knowingly and willfully concealed or falsely stated the amount of political campaign activity on its Form 990 tax returns for 2008, 2009, 2010, 2011, 2012, and 2013, it likely violated 18 U.S.C. § 1001.

### Conclusion

The NRA omitted more than \$33.5 million in spending on political activities from its 2008-2013 tax returns. The IRS should commence an examination of the NRA and, should it find the NRA made false or incomplete statements on its tax returns, take appropriate action, including but not limited to referring this matter to the Department of Justice for prosecution. Only vigorous enforcement by the IRS will deter other organizations from violating our nation's tax laws for political gain.

Thank you for your prompt attention to this matter.

Sincerely,



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Noah Bookbinder  
Executive Director  
Citizens for Responsibility and Ethics in Washington

Encls.

cc: IRS-EO Classification

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<sup>35</sup> 18 U.S.C. § 1001(a).