

June 10, 2015

Thomas Hintermister  
Director, Audit Division  
Federal Election Commission  
999 E Street, N.W., Room 501A  
Washington, DC 20463

Re: Request for Audit Regarding National Rifle Association of America Political Victory Fund and National Rifle Association Institute for Legislative Action

Dear Mr. Hintermister:

Citizens for Responsibility and Ethics in Washington (“CREW”)<sup>1</sup> respectfully requests the Federal Election Commission (“FEC”) commence an audit of the National Rifle Association of America Political Victory Fund (“NRA-PVF”) and the National Rifle Association Institute for Legislative Action (“NRA-ILA”) to determine if these organizations are complying with the Federal Election Campaign Act (“FECA”) and FEC regulations. Recent news reports describing violations of campaign finance law by these organizations, coupled with other possible disclosure failures and prior admitted reporting violations, indicate an audit of NRA-PVF and NRA-ILA is warranted.

### Factual Allegations

#### NRA-PVF and NRA-ILA

NRA-PVF is a political action committee that serves as the separate segregated fund of the National Rifle Association of America (“NRA”),<sup>2</sup> a tax-exempt corporation organized under section 501(c)(4) of the Internal Revenue Code.<sup>3</sup> NRA-PVF finances political activity in connection with both federal and non-federal elections.<sup>4</sup> NRA-ILA is an internal division of the

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<sup>1</sup> CREW is a nonpartisan, nonprofit government and political watchdog organization committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. In furtherance of its mission, CREW monitors the campaign finance activities of those who run for federal office and those who make expenditures to influence federal elections, educates citizens regarding the integrity of the electoral process, and files complaints with the FEC when it discovers violations of the FECA.

<sup>2</sup> NRA-PVF, FEC Form 1, Statement of Organization, Amended, March 16, 2009, available at <http://docquery.fec.gov/pdf/408/29991757408/29991757408.pdf>.

<sup>3</sup> NRA 2012 Form 990 (excerpts attached as Exhibit A).

<sup>4</sup> See, e.g., NRA-PVF, Form 3X, 2012 Pre-General Election Report, Amended, Schedule B, November 29, 2012 (reporting disbursements to numerous state candidates), available at <http://docquery.fec.gov/pdf/318/12961297318/12961297318.pdf>.

NRA, and represents itself as the NRA's "lobbying arm."<sup>5</sup> NRA-ILA is a membership organization under the FECA.<sup>6</sup>

*NRA-ILA's Solicitation of Contributions Given to NRA-PVF*

As described in a recent *Yahoo News* report, during 2014 NRA-ILA solicited contributions from the general public that the tax-exempt group represented would benefit NRA-ILA, but were deposited instead into the account of NRA-PVF, the NRA's political action committee.<sup>7</sup> The author of the report, Alan Berlow, reported that early in the summer of 2014 he personally made several contributions to the NRA, including one through the NRA-ILA's website, nraila.org.<sup>8</sup> The website had a banner that read "NRA-ILA Institute for Legislative Action," and encouraged the public to "GET INVOLVED!"<sup>9</sup> On this "donate" page, Mr. Berlow filled in only his name, address, credit card information, and "\$1.00" for the contribution amount, then clicked a button that read "Submit Donation."<sup>10</sup> That took Mr. Berlow to a new webpage with the NRA-ILA banner at the top, an NRA-ILA logo in bold letters at the bottom, and a URL with the group's initials.<sup>11</sup> Under an NRA-ILA banner, Mr. Berlow was thanked for his donation.<sup>12</sup> Mr. Berlow added he received an email from NRA-ILA thanking him for his donation a few minutes later.<sup>13</sup>

Despite these representations that his contribution was going to NRA-ILA, Mr. Berlow's contribution was directed instead to NRA-PVF.<sup>14</sup> As reported by Mr. Berlow, his credit card statement showed a payment to NRA-PVF, which he confirmed in a conversation with a Visa representative.<sup>15</sup> The *Yahoo News* report included partial screenshots of what appear to be the webpages he visited in making this contribution, and included what appears to be a partial scan of his Visa bill showing a \$1.00 charge on July 7, 2014 to "NRA PVF INTERNET."<sup>16</sup> Mr. Berlow further reported he later received a note from NRA-PVF wishing him "a very happy

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<sup>5</sup> NRA website, About the NRA Institute for Legislative Action page, available at <https://www.nraila.org/about/>. NRA-ILA's activities are reported on the NRA's Form 990 tax returns. 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).

<sup>6</sup> See NRA-ILA, Report of Communication Costs By Corporations and Membership Organizations, 2012 Year-End Report, Amended, June 5, 2012, available at <http://docquery.fec.gov/pdf/343/13962827343/13962827343.pdf>. See also 11 C.F.R. § 114.1(e)(1).

<sup>7</sup> Alan Berlow, The NRA's Brazen Shell Game With Donations, *Yahoo News*, April 21, 2015, attached as Exhibit B and available at <https://www.yahoo.com/politics/the-nras-deceptive-shell-game-with-donations-a-116744915796.html>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Berlow, *Yahoo News*, April 21, 2015.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Berlow, *Yahoo News*, April 21, 2015.

<sup>16</sup> *Id.* The entry on the statement also has the notation "WWW.NRAPVFORGVA", which likely indicates the contribution went to NRA-PVF. *Id.*

holiday season” and noting that every dollar he “contributed to NRA-PVF this year all added up to invaluable victories in last month’s elections.”<sup>17</sup>

Archived versions of NRA-ILA’s website appear to match Mr. Berlow’s description of the pages he visited in making the contribution and the screenshots included in the *Yahoo News* report. A version of the “donate” page from June 25, 2014 preserved on the Internet Archive Wayback Machine contains the same banners, disclaimers, and requests for name, address, and credit card information Mr. Berlow described, and appear to be the same page as the partial screenshot in the *Yahoo News* report.<sup>18</sup>

Following publication of the report, the NRA admitted online donations to NRA-ILA, including Mr. Berlow’s, were deposited in NRA-PVF’s account.<sup>19</sup> In total, the NRA asserted, these solicitations resulted in approximately \$125,000 intended for NRA-ILA to be given to NRA-PVF.<sup>20</sup> The NRA claimed this involved 33 contributions and only occurred during a four month period in 2014.<sup>21</sup> This conduct, the NRA asserted, was inadvertent and the result of a “coding error.”<sup>22</sup>

The NRA further contended its error was caught and corrected internally.<sup>23</sup> However, neither NRA-PVF nor NRA-ILA took any public action or made any public statements about the improperly directed contributions until after *Yahoo News* published its report on April 21, 2015, long after the purported four month period in 2014.<sup>24</sup> Despite having filed nine new or amended monthly reports of receipts and disbursements with the FEC in 2015, the NRA groups failed to take any action until April 28, 2015, when NRA-PVF transferred \$125,153 to NRA-ILA to compensate it for the contributions.<sup>25</sup>

### *NRA-PVF’s Solicitation of Contributions*

Mr. Berlow also reported in *Yahoo News* he made a contribution on the NRA-PVF website.<sup>26</sup> According to Mr. Berlow, a “button” at the bottom of NRA-PVF’s website stated

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<sup>17</sup> *Id.*

<sup>18</sup> See <http://web.archive.org/web/20140625055856/https://www.nraila.org/gct-involved-locally/secure/donate.aspx> (attached as Exhibit C).

<sup>19</sup> Berlow, *Yahoo News*, April 21, 2015 (“update” at conclusion of report). See also Stephen Gutowski, *NRA: Accusations in Yahoo News Report Are False*, *Washington Free Beacon*, May 29, 2015, attached as Exhibit D and available at <http://freebeacon.com/issues/nra-accusations-in-yahoo-news-report-are-false/>.

<sup>20</sup> Berlow, *Yahoo News*, April 21, 2015.

<sup>21</sup> *Id.*; Gutowski, *Washington Free Beacon*, May 29, 2015.

<sup>22</sup> Berlow, *Yahoo News*, April 21, 2015 (quoting NRA spokeswoman Jennifer Baker).

<sup>23</sup> *Id.*; Gutowski, *Washington Free Beacon*, May 29, 2015.

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

<sup>25</sup> NRA-PVF, *Form 3X, May Monthly Report*, May 20, 2015, available at <http://docquery.fec.gov/pdf/619/15971082619/15971082619.pdf>. Despite asserting it caught the error internally, the NRA also claimed it only took action after its “accounting department learned of the misallocation from the *Yahoo News* piece.” Gutowski, *Washington Free Beacon*, May 29, 2015.

<sup>26</sup> Berlow, *Yahoo News*, April 21, 2015.

“Donate to the NRA-ILA,” and clicking on it directed Mr. Berlow to NRA-ILA webpages, where he again made a small donation.<sup>27</sup> Although other parts of the NRA-PVF’s website permitted access only after visitors entered an NRA member identification number, Mr. Berlow said he was not required to provide a member ID to make the contribution.<sup>28</sup>

Again, Mr. Berlow received online and email thank you messages for contributing to the NRA-ILA.<sup>29</sup> As with his other contribution, his credit card statement showed his contribution went to the political action committee, NRA-PVF, not NRA-ILA.<sup>30</sup> Archived versions of these webpages again match Mr. Berlow’s description. The July 3, 2014 version of the NRA-PVF home page contains the box at the bottom stating “Donate to the NRA-ILA” that links to the NRA-ILA “donate” page.<sup>31</sup>

Following publication of the *Yahoo News* report, the NRA denied any misconduct with regard to NRA-PVF’s solicitation.<sup>32</sup> According to the NRA, nonmembers who tried to make donations on the publically accessible part of the NRA-PVF’s website were sent to pages providing an option to contribute to NRA-ILA.<sup>33</sup> Due to the same coding error, the NRA claimed, some of those contributions were routed to NRA-PVF by mistake.<sup>34</sup>

#### *NRA-PVF’s Failure to Disclose the Employer and/or Occupation of Contributors*

In making his contribution, Mr. Berlow was not asked to provide his employer or occupation, and presumably neither were any of the contributors who donated the \$125,153 that was improperly deposited in the NRA-PVF account. Moreover, CREW further examined NRA-PVF’s campaign finance reports, and it appears the employer and/or occupation of hundreds of contributors who donated more \$200 in a year to NRA-PVF are missing from reports the group filed with the FEC in 2013 and 2014.<sup>35</sup> For example, NRA-PVF’s October 2014 monthly report lists two \$5,000 contributions, one \$1,200 contribution, three \$1,000 contributions, and 14 \$500 contributions with neither occupation nor employer information.<sup>36</sup>

#### *NRA-PVF’s Prior FECA Violations*

In addition to the present allegations, NRA-PVF previously admitted to violating the FECA. Specifically, in the run-up to the 2004 election, NRA-PVF failed to file eight reports of independent expenditures it made to support or oppose federal candidates, and left spending off

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<sup>27</sup> *Id.*

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

<sup>29</sup> *Id.*

<sup>30</sup> Berlow, *Yahoo News*, April 21, 2015.

<sup>31</sup> See <http://web.archive.org/web/20140703161551/http://www.nrapvf.org/> (attached as Exhibit E).

<sup>32</sup> Berlow, *Yahoo News*, April 21, 2015.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> NRA-PVF, *FEC Form 3X, 2013-14 Reports*, available at <http://docquery.fec.gov/cgi-bin/fecimg/?C00053553>.

<sup>36</sup> NRA-PVF, *FEC Form 3X, 2014 October Monthly Report*, available at <http://docquery.fec.gov/pdf/807/14952927807/14952927807.pdf#navpanes=0>.

of one report it did file.<sup>37</sup> These reports must be filed 24 or 48 hours after the expenditure is made to provide the public timely information on campaign spending.<sup>38</sup> NRA-PVF claimed these errors were “due to an inadvertent oversight.”<sup>39</sup> NRA-PVF paid a \$17,000 civil penalty, and agreed to send its employees to an FEC seminar and conduct an internal training program.<sup>40</sup>

### Potential Violations

The FECA and FEC regulations authorize the FEC to conduct audits of political committees to determine if they are in substantial compliance with the statute and regulations.<sup>41</sup> The potential violations of law by NRA-PVF and NRA-ILA show an audit of these organizations is warranted.

#### Solicitations from the general public

The FECA and FEC regulations prohibit a membership organization or its connected separate segregated fund from soliciting contributions for the separate segregated fund from the general public. Specifically, the FECA and FEC regulations prohibit any corporation or its separate segregated fund from soliciting “contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families.”<sup>42</sup> A membership organization, including a corporation that is a membership organization and its separated segregated fund, also may solicit funds for the separate segregated fund from their members and their families.<sup>43</sup> Solicitations outside this restricted class, however, are forbidden.<sup>44</sup> FEC regulations provide a safe harbor for accidental or inadvertent solicitations outside the restricted class, but only if the corporation or separate segregated fund used its “best efforts” to comply with the limitations and the method of solicitation was promptly corrected after the error was discovered.<sup>45</sup>

NRA-ILA is a division of the NRA, a corporation that is a membership organization. On its website, NRA-ILA solicited contributions from the general public that were deposited in the account of its separate segregated fund, NRA-PVF. In addition, NRA-PVF solicited funds from the general public on its website that were deposited in NRA-PVF’s account. As a result, both groups may have violated the FECA and FEC regulations.

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<sup>37</sup> NRA-PVF, Settlement Agreement, ADR No. 314, ¶ 3, September 25, 2006, available at <http://eqs.fec.gov/eqsdocs/ADR/0000581F.pdf>.

<sup>38</sup> 52 U.S.C. § 30104(g).

<sup>39</sup> NRA-PVF, Settlement Agreement, ADR No. 314, ¶ 11.

<sup>40</sup> *Id.*, ¶ 13. A federal court also determined in 1991 that NRA-ILA and NRA-PVF violated the FECA and FEC regulations in 1988 with regard to transactions related to solicitations. *FEC v. NRA Political Victory Fund*, 778 F. Supp. 62 (D.D.C. 1991). That decision was reversed when an appellate court concluded the composition of the FEC at that time was unconstitutional. *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993).

<sup>41</sup> 52 U.S.C. § 30111(b); 11 C.F.R. § 104.16.

<sup>42</sup> 52 U.S.C. § 30118(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1).

<sup>43</sup> 52 U.S.C. § 30118(b)(4)(C); 11 C.F.R. § 114.7(a).

<sup>44</sup> See, e.g., Federal Election Commission, Campaign Guide, Corporations and Labor Organization (2007), at 19.

<sup>45</sup> 11 C.F.R. § 114.5(h).

The NRA claimed the improper solicitations were inadvertent and the product of a coding error, and that it corrected the mistake internally. It is, however, unknown what efforts NRA-PVF and NRA-ILA made to ensure they complied with the restrictions, and if they promptly corrected any errors. An audit should be authorized to examine the NRA's claim and the extent of NRA-ILA's and NRA-PVF's efforts and alleged correction of their errors, and more broadly review the groups' solicitations to ensure they are in substantial compliance with the law.

### Solicitation disclosures

FEC regulations require solicitations of contributions to disclose information about how the funds will be used and the organization soliciting them. Specifically, a separate segregated fund must disclose "the political purposes of the fund at the time of the solicitation,"<sup>46</sup> and an organization that finances both federal and non-federal political activity must "expressly state[] that the contribution will be used in connection with a Federal election" in its solicitation.<sup>47</sup> In addition, all websites of a political committee available to the general public and all public communications by any person that solicit a contribution "must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee."<sup>48</sup> This disclaimer must be clear and conspicuous, giving the reader "adequate notice of the identity of the person or political committee that paid for and, where required, that authorized the communication."<sup>49</sup>

NRA-PVF is a separate segregated fund and a political committee, and it finances both federal and non-federal political activity. Its solicitation, however, failed to inform potential contributors their funds would be used in connection with a federal election or the political purpose of the recipient of their money, NRA-PVF. To the contrary, NRA-PVF led potential contributors to believe their contributions were for NRA-ILA, the NRA's "lobbying arm." In addition, NRA-PVF failed to provide notice who paid for the website soliciting contributions.

To the extent the solicitation on NRA-ILA's website should be treated as an NRA-PVF solicitation, it also failed to inform potential contributors their funds would be used in connection with a federal election or the political purpose of NRA-PVF, and led potential contributors to believe their contributions were for NRA-ILA. The solicitation on the NRA-ILA's website further failed to provide notice of who paid for the website soliciting contributions.

At a minimum, the NRA acknowledged it solicited and received more than \$125,000 in contributions that went to NRA-PVF, all apparently without the required notices. While the NRA claimed its errors were the result of an inadvertent coding error, neither NRA-PVF nor NRA-ILA took any action to address the improperly allocated contributions until after *Yahoo*

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<sup>46</sup> 11 C.F.R. § 114.5(a)(3).

<sup>47</sup> 11 C.F.R. § 102.5(a)(2).

<sup>48</sup> 11 C.F.R. §§ 110.11(a), (b)(3).

<sup>49</sup> 11 C.F.R. § 110.11(c)(1).

*News* made them public. Only then did NRA-PVF transfer the funds to NRA-ILA. As a result, NRA-PVF and NRA-ILA may have violated the FECA and FEC regulations. In addition, the NRA claims only 33 contributions totaling \$125,153 were involved, but it is unknown if additional contributions were solicited without the notices. An audit should be authorized to examine the NRA's claims,<sup>50</sup> and to more broadly examine NRA-PVF's and NRA-ILA's solicitations to ensure they are in substantial compliance with the law.

#### Disclosure of Employer and Occupation of Contributors

The FECA and FEC regulations require political committees to report the identification of any person who contributes more than \$200 to the committee in a calendar year, including an individual's employer and occupation.<sup>51</sup>

Under the FECA and FEC regulations, the reporting requirement can be satisfied if the treasurer of a political committee shows he or she used "best efforts" to obtain identification information.<sup>52</sup> Best efforts can be shown if, among other things, all the political committee's written solicitations of contributions include a clear request for the contributor's full name, mailing address, occupation, and name of employer, and an accurate statement of federal law regarding the collection and reporting of the identification of individual contributors.<sup>53</sup>

NRA-PVF solicited at least \$125,000 of contributions that apparently failed to request contributors' employer and occupation. In addition, NRA-PVF failed to report the employer and/or occupation of hundreds of contributors who donated more than \$200 in a year to NRA-PVF in 2013 and 2014. If any contributor gave more than \$200 to NRA-PVF through these solicitations, and NRA-PVF did not report that information or make best efforts to obtain it, NRA-PVF may have violated the FECA and FEC regulations. An audit should be authorized to examine NRA-PVF's reporting of the identification of contributions and its efforts to obtain identification information to ensure it is in substantial compliance with the law.

#### Conclusion

The *Yahoo News* report shows NRA-ILA and NRA-PVF appear to have violated the FECA and FEC regulations in its solicitations during the 2014 election cycle, and CREW's examination of their campaign finance reports further may show violations of their disclosure obligations. In addition, NRA-PVF has previously admitted FECA violations. By misleading donors about the true destination of their contributions and failing to disclose information about many of its donors, the NRA groups appear to be trying to hide their political activities from the

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<sup>50</sup> Even if an audit were to confirm the NRA's assertion, inadvertent failures to provide proper notices on solicitations may violate the FECA and FEC regulations. See, e.g., MUR 5341, First General Counsel's Report, at 25-26, August 23, 2004, available at <http://eqs.fec.gov/eqsdocsMUR/000053B0.pdf>.

<sup>51</sup> 52 U.S.C. §§ 30101(13)(A), 30104(b)(3)(A); 11 C.F.R. §§ 100.12, 104.3(a)(4).

<sup>52</sup> 52 U.S.C. § 30102(i); 11 C.F.R. § 104.7(a).

<sup>53</sup> 11 C.F.R. § 104.7(b)(1).

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public. As a result, the FEC should commence an audit of these groups to determine if they are in substantial compliance with the law.<sup>54</sup>

Thank you for your prompt attention to this matter.

Sincerely,



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Executive Director  
Citizens for Responsibility and Ethics in Washington  
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Washington, D.C. 20001  
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Encls.

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<sup>54</sup> If the FEC construes this request for an audit as an complaint pursuant to 52 U.S.C. § 30109(a) and 11 C.F.R. § 111.4, CREW and its executive director, Noah Bookbinder, should be treated as the complainants. A verification is attached in accordance with 11 C.F.R. § 111.4(b)(2).

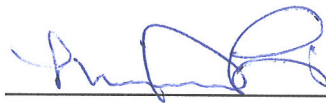


Verification

Citizens for Responsibility and Ethics in Washington and Noah Bookbinder hereby verify that the statements made in the attached Complaint are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

  
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Noah Bookbinder

Sworn to and subscribed before me this 8th day of June, 2015.

  
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Notary Public

