

BEFORE THE INTERNAL REVENUE SERVICE

Re: National Education Association, FEIN 53-0115260

COMPLAINT

I. BACKGROUND

Landmark Legal Foundation (“Landmark”) requests that the Internal Revenue Service (“IRS” or “the Service”) investigate the conduct and tax filings of the National Education Association (“NEA”).

Internal Revenue Code (“IRC”) 501(c)(5) tax exempt labor organizations, including the NEA, are required to disclose fully to the public, union members, non-union fee payers and the IRS the extent of the organization’s political activities and expenditures. Moreover, political activities and expenditures are taxable to the organization unless they are segregated from the organization’s general operations and conducted through a political action committee. IRC 527(f). The evidence set forth in this complaint indicates that the NEA is spending substantial general operating funds on taxable political activities, which it has not reported on its tax returns for the last several years.

II. COMPLAINT

A. The Full Extent Of The NEA’s Political Expenditures Are Not Reported.

The NEA, as a tax exempt organization, is required to file a Form 990 information tax return. *See* IRC 6033. The instructions accompanying the Form 990 explicitly require that certain political expenditures must be reported by exempt organizations.

(Exhibit 1, Form 990 Instructions):

Line 81 Expenditures for political purposes—

A political expenditure is one intended to influence the selection, nomination, election, or appointment of anyone to a Federal, state, or local public office, or office in a political organization, or the election of Presidential or Vice Presidential electors. It does not matter whether the attempt succeeds.

An expenditure includes a payment, distribution, loan, advance, deposit, or gift of money, or anything of value. It also includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

All section 501(c) organizations. Section 501(c) organizations must file Form 1120-POL if their political expenditures and their net investment income both exceed \$100 for the year.

If a section 501(c) organization establishes and maintains a section 527(f)(3) separate segregated fund, it is the fund's responsibility to file its own Form 1120-POL if the fund meets the Form 1120-POL filing requirements. Do not include the segregated fund's receipts, expenditures, and balance sheet items on the Form 990 or Form 990-EZ, of the section 501(c) organization that establishes and maintains the fund.

However, when a section 501(c) organization transfers its own funds, to a separate segregated section 527(f)(3) fund for use as a political expenses, the 501(c) organization must report the transferred funds as its own political expenses on its Form 990 or Form 990-EZ.

Since at least its 1994 filing, the NEA has reported that it has made no such political expenditures on its Form 990 tax returns. (Exhibits 2, 3, 4, and 5 (NEA 1994, 1995, 1996 and 1997 Form 990s).)

A labor organization, such as the NEA, is permitted to engage directly in political activity, as defined by IRC 527(f) (and set forth in the instructions to Line 81, above), if all such political expenditures and activities are fully accounted for and reported to the IRS as taxable income. *See* IRC 501(b).

Political expenditures as defined above also may be engaged in without generating income tax liability if the NEA establishes a "separate segregated fund," (also known as a political action committee (PAC)), as provided in IRC 527(f)(3). PACs,

however, are subject to strict income and expenditure reporting rules requiring full disclosure of their political activities. While the NEA operates a PAC, the evidence presented in this complaint indicates that the NEA's political expenditures and activities extend beyond its reported PAC activities and, therefore, beyond the zero dollars it has reported on its last several federal tax returns.

1. 501(c)(5) Tax Exempt Organizations Are Permitted to Make Political Expenditures Provided Such Expenditures Conform With Specific Statutory Criteria.

IRC 527(f) PACs serve three functions: 1) PACs provide full disclosure of the nature and extent of a labor organization's participation in the political process; 2) the segregation of funds permits the IRS to monitor whether political activity constitutes the labor organization's primary activity (which is prohibited under IRC 501(c)(5); and 3) a separate and full accounting of resources dedicated to political activities allows the union's members, and non-members compelled to pay fees to the union, to understand fully how their dues and fees are used.

Permitted PAC 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." 26 CFR Section 1.527-2(c)(1). Whether an expenditure is for a political activity depends upon all the facts and circumstances. *Id.*

For example, if a section 527(f) political organization finances seminars or conferences that are intended to influence attendees to support individuals for public office and whose political affiliations or views are in harmony with the political

philosophy and purposes of the organization, then the expenditures for such activities are considered to be political. *See* 26 CFR 1.527-2(c)(5)(viii).

While the NEA's official political organization, NEA-PAC¹, clearly meets applicable separate segregated fund standards, the evidence set forth in this complaint indicates that the NEA's political activities extend beyond that which has been reported by its PAC and they have not been reported as taxable income to the IRS.

2. The NEA Does Not Report Extensive Political Activity on IRS Forms 990 and 1120-POL.

As stated previously, IRC 501(c)(5) organizations engaging in political activity are required to disclose fully and make public the organization's non-PAC political expenditures and activities on IRS Form 990. *See* IRC 527(f). Detailed disclosures of these political expenditures must be filed with the IRS on a Form 1120-POL. (See Exhibit 1, Form 990 Reporting Instructions, at p. 25-26.) Such expenditures are taxable to the organization. IRC 527(f).

Moreover, political expenditures are not limited to money transactions. *See* 26 CFR 1.527-2(c). They include the cost of using, in part or whole, any facilities, personnel, equipment, supplies, automobiles, etc. *Id.* These expenses and in-kind activities must all be accounted for as political expenditures. Even the time spent by an organization's employees directing "volunteer" campaign efforts or appearing on behalf of candidates must be accounted for by the organization if these activities are being subsidized by general revenues. *Id. See Alaska Public Service Employees Local 71 v. Commissioner*, T.C.M. 1991-650.

¹ The NEA's PAC appears in FEC filings under the names "National Education Association-Political Action Committee" and "NEA Committee for Children and Public Education." The entities appear to be one in the same.

a. **The NEA's Political "Integration" Strategy.**

Review of NEA publications reveal the overwhelming importance it attributes to political activity as a core purpose of the union's existence. For example, the NEA has published a series of "how to" handbooks designed to educate its affiliates² and membership in the art of politics. In the introduction to "How To Set Up and Operate a Local Association Political Action Program" (Exhibit 7) the NEA clearly states its purpose:

In too many places, from too many quarters, public schools and teachers are under attack. We face great issues: tuition tax credits, education reform, voucher systems, competency testing, academic freedom, collective bargaining, funding cuts, and more. *Fighting back means fighting back through politics – practical politics.*

(Id. at Introduction (emphasis added).)

In a section entitled "Organizing for Political Action," the NEA political action manual states:

The most effective way in which the Association can achieve significant gains for members and for public education is through *political organizing*. By *helping to elect* pro-education candidates at the local, state and national levels, we can more easily pass or defeat legislative proposals that impact on public education for all.

(Id. at 1 (emphasis added).)

To successfully conduct a local political action program, the NEA recommends, among other things, the creation of an "informal" committee to coordinate all political action activities for the local organization and that the local join an existing UniServ region and/or area political action committee. (Id.)³

² The National Education Association has affiliates in every state of the union and in 13,000 local school districts throughout the nation. (Exhibit 6, National Education Association FAQ, NEA web site, March 22, 2000.)

³ The NEA conducts its operations through a "network of staff at the local, state, and national level." (Exhibit 6, National Education Association FAQ, NEA web site, March 22, 2000.) These NEA

The NEA political action handbook section on “Integrating Political Action into the Local Association,” describes the extent to which the NEA promotes the commingling of political activity and general operations throughout its affiliate structure. (Id. at 4.)

Integrating the Structure

The Association is ultimately responsible for all of its programs – including political action. In the minds of officeholders, candidates, and the public, it is the Association they are dealing with – not a separate and isolated political action committee.

Consult your state Association to determine the best method of integration. Some political action committees have found it effective to name the Association president (or his/her designee) as the committee chair. Often, to foster integration, the UniServ staff serves as a non-voting committee treasurer.

You may want to consider these additional organizational steps which have proved effective in many situations: naming an odd number of members to the PAC; making sure a majority (or significant number) of the PAC members are also members of the local Association board of directors. . . naming the Association representative . . . of each school building as the political representative.

Integrating the Program

In addition to integrating the structure of the political action committee and the Association, programs should be integrated too. For example:

- a. Combine PAC fundraising and the Association’s membership drive – so you avoid separate drives by asking people to join the Association and give to the PAC at the same time (Building a unified commitment to political action means giving each Association member the opportunity to contribute his/her fair share to PAC.)
- b. At the bargaining table, fight for the payroll deduction system of making PAC contributions and for the designation of Election Day as a paid holiday.

administrators are known as “UniServ” staff. The NEA integrates political functions into the duties of certain employees, especially its UniServ directors. (Exhibit 8, *Unified Staff Service Program To State and Local Associations* (NEA December 1994).)

- c. Show members how human and civil rights programs and laws were accomplished through effective political campaigning and lobbying.
- d. Include political action program articles in Association publications. Members will be more receptive to volunteering and contributing money if they know the political process and how government works.
- e. Show members how electing pro-education candidates can result in more money for education, more relevant curriculum, smaller class size, better in-service training, and in general making education the nation's priority.
- f. Include a political education line item in the local Association's budget so that dues monies are available for conducting political activities with members and their families.

A strong, assertive political action program provides many organization benefits and recognition in all Association programs. The more integrated the political action program is with other Association programs, the more successful it will be. Political action and lobbying are year-round activities.

(Id.)

The NEA's political guidebooks provide evidence of a systematic strategy to integrate political action in all aspects of union organizations, rather than segregate those activities from general operations.⁴

b. The NEA's Strategic Priorities Include Political Activities.

i. 1998-2000 NEA Budget Priorities.

In addition to educating its affiliates on how to commingle political activities with general operations, the evidence indicates that the NEA itself practices what it preaches. For example, in its 1998-2000 Strategic Plan and Budget (Exhibit 10, NEA Strategic Plan and Budget, 1998-2000, pp. 15-16), the NEA's strategic priorities are laced with

⁴ The NEA also provides workbooks and workshop sessions designed to encourage its members to actively engage in political action. (See Exhibit 9, You and Politics: A Workbook Introduction.)

politically oriented activity. The priorities are broken down into numerous categories, including:

Priority 3 – Public, Parental and Business Support

-- \$350,000 for “cyberspace advocacy systems developed and maintained on the NEA and state affiliate Web sites that mobilize Association members and the public in support of pro-public education legislation and *candidates at the state and federal level.*” (Id. (emphasis added).)

Goal 5. \$9.2 million for “[s]ignificantly increased and lasting

bipartisan political advocacy and support for public education.”

-- \$386,000 earmarked for 1999-2000 for “organizational partnerships with political parties, *campaign committees*, and *political organizations representing elected officials at the state and national levels* strengthened, increasing legislators’ commitment to support public education on a bipartisan basis.” (Id. (emphasis added));

-- \$540,000 over two years for development of a “national political strategy developed to address issues such as *congressional and legislative reapportionment and redistricting*, campaign finance reform, *candidate recruitment*, independent expenditures, *early voting*, and *vote-by-mail programs in order to strengthen support for pro-public education candidates . . .*” (Id. (emphasis added));

-- \$350,000 for “training programs and materials designed, developed, and tested that *strengthen organizational capacity to support the election of pro-public education candidates . . .*” (Id. (emphasis added));

-- \$872,000 in each 1998 and 2000 intended to develop a “comprehensive coordinated state-specific campaign developed and implemented aimed at *electing*

bipartisan pro-education candidates” in each respective election cycle; (Id. (emphasis added)); and

-- \$530,000 for “political data systems and services maintained and enhanced to effectively assist state affiliate political programs.” (Id. (emphasis added).)

Several of these NEA priority items fall under the definition of political expenditures that must be reported on line 81 of IRS tax Form 990.

ii. 1996 NEA Budget Priorities.

The NEA’s 1998-2000 Strategic Plan and Budget priorities are similar to those stated in the NEA’s 1996 Strategic Plan and Budget. (See Exhibit 11, NEA Strategic Focus Plan and Budget for 1996-98, pp. 11-13.) For example, in the NEA’s 1996 Strategic Focus Plan, “strategic objectives” included:

Strategic Objective 1 – Building Support in the External Environment, which included the following expenditures:

-- \$9.6 million to “[b]uild bipartisan constituencies among those running for and elected to public office to support public education.” (Id. (emphasis added).) Activities designed to accomplish this objective included:

- Screening candidates for federal office;
- conducting political surveys for candidate evaluation;
- providing a “fair process to select recommended candidates for association support”;
- enhancing connection between political action and education policy;

- mobilize members and other resources. . . to support the election of pro-education candidates and ballot measures;
- provide technical assistance, surveys, and training in political campaign work to affiliates and members at all levels;
- increase efforts to mobilize key groups of NEA members . . . for legislative and campaign activity;
- increase the Association's capacity to provide assistance to recommended candidates;
- identify and evaluate new/innovative ways to effect election results, such as mail ballot, early voting, term limits on state elected officials, etc.;
- cultivate working relationships with Democratic and Republican parties;
- coalesce with other political organizations who share mutual goals;
- identify and expand relationships with groups who believe in and support public education; and
- "[c]omplete Phase III (Candidate Support) of the NEA Election '96 Campaign by carrying out unified campaigns and mobilizing members to assist in the election of candidates at all levels of government and to win ballot measures.

(Id.) The evidence indicates that the NEA budgets millions of dollars for political expenditures that it does not report on line 81 of IRS Form 990, including several of the activities set forth above.

iii. 1994-95 NEA “Program Accomplishments.”

The NEA prepared a Program Accomplishment Report following its 1994-95 budget year. (Exhibit 12, 1994-95 Program Accomplishment Report.) In the report the NEA disclosed, among other things, that the NEA expended \$2,517,701 on “Government Relations program assistance to state affiliates,” including:

NEA provided coordinated program assistance and consultation to state affiliates in the following areas: affiliate capacity building; training; state legislative assistance; ballot and referenda; *candidate recruitment and recommendation*; campaign staff and support; message development political advocacy (sic); federal legislative support and member mobilization; PAC fundraising; and *delegate selection*. Assistance provided to local affiliates through state affiliates on school board and local levy programs.

(Id. at 34 (emphasis added).)

The NEA expended an additional \$792,422 to:

Secure member support for Association-endorsed candidates, campaign assistance, strategic planning assistance, and/or training was provided to all state affiliates. Support was provided in 34 states for gubernatorial races. Resources were utilized to enhance 20 state affiliate government relations programs through capacity, new member involvement, training of both staff and leaders, expansion of lobbying effectiveness, message development, the use of survey research, and PAC funding at the local, state, and national levels. Assistance was provided to local affiliates through state affiliates on school board and local levy programs.

(Id. (emphasis added).)

Consequently, among the NEA’s “Program Accomplishments” was the apparent expenditure of millions of dollars to promote and support candidates for public office.

However, the NEA did not report any of these taxable political expenditures on Line 81 of its 1995 or 1996 Form 990 tax returns.⁵

c. The UniServ Staff: Collective Bargaining Agents or Political Directors?

The NEA relies largely on local administrators, known as UniServ directors, to integrate its political activity into its general operations throughout the nation. The UniServ director is an NEA affiliate's employee; however, he or she is selected, trained, and funded primarily by the NEA. See Lieberman, M., *The Teacher Unions – How the NEA and AFT Sabotage Reform and Hold Students, Parents, Teachers, and Taxpayers Hostage to Bureaucracy* (Simon & Schuster 1997), p. 101.

In every congressional district in America, at least one NEA-funded UniServ director leads its region's local, state, and national political activities. In addition, "NEA staff are dispatched to targeted states to assist with phone banks, door-to-door canvassing, absentee vote programs, media development and coordination, and polling and consulting to benefit NEA-endorsed candidates." (Exhibit 14, "Teachers' Pet Party" *The Weekly Standard*, p. 12 (July 24, 1996).)

In the NEA's publication, *Unified Staff Service Program To State and Local Associations* (December 1994) p. 4 (Exhibit 8), the NEA's UniServ Policy Guidelines declare, in part, that:

UniServ staff responsibilities shall include, but not be limited to:

⁵ According to the *Boston Globe*, the NEA's political director Jack Pacheco, "said the NEA since [1992-93] ended its practice of using dues to pay for political contributions, reserving that for its political action committee." (Exhibit 13, "Teachers back Gore with money, muscle," *The Boston Globe*, June 3, 2000.) The IRS must determine if, in fact, the NEA did stop using tax exempt funds to influence the election of candidates. However, for the 1992-93 period the *Boston Globe* "the [NEA] spent 10 times as much of its budget on political activity (\$34.7 million) as on ensuring excellence in public education (\$3.3 million) or improving professional standards and working conditions for all education employees (\$3 million)." (Id.)

4. Developing and/or executing local association political action, community development, community/public relations, legislative support and professional development activities and programs . . . and coordinating and advocating national and state association programs and priorities with local associations and members.

Moreover, the NEA's 1,800 UniServ directors act as "the largest army of paid political organizers and lobbyists in the U.S., dwarfing the forces of the Republican and Democratic national committees combined." (Exhibit 15, "The National Extortion Association?" *Forbes*, p. 80 (June 7, 1993).) *See also* Haar, Lieberman & Troy, *The NEA and AFT: Teacher Unions in Power and Politics*, (ProActive Publications 1996) at 59.

Indeed, the UniServ "field representatives"

link the NEA to its 13,000 local affiliates. These "UniServ directors" provide bargaining and political services in every state, the District of Columbia, Puerto Rico, and in four overseas areas. Supported in part by a special fee (\$19 in 1993-94) assessed of every NEA member, UniServ staff tie locals to the NEA's national political network. . . . In practice, UniServ directors also often exercise the leadership in campaigns for or against school board members, state legislators, and other candidates for public office. By any criterion, they are a crucial component of the NEA's vast political as well as bargaining operations.

Id. at 21. The NEA's UniServ program budget for 1993-94 was nearly \$50 million. *See id.* The current NEA budget provides \$73.7 million for the UniServ program in 1998-99 and \$76.4 million for 1999-2000. (Exhibit 10, 1998-2000 Strategic Plan and Budget, p.1.)

The evidence indicates that although they are designated as the NEA's local collective bargaining agents, the UniServ directors serve, in part, as paid political operatives for the NEA. Indeed, as Lieberman details:

The UniServ funding agreements between the NEA and the state associations, and between the state and local associations, emphasize the political responsibilities of UniServ directors. These responsibilities include directing local association

Yet, the NEA's 1994 Form 990 (Exhibit 2), which covers the 1992-93 period, reports that the NEA spent \$0 on political activities.

political activities. . . NEA-PAC guidelines also recommend that UniServ directors participate in the interview of candidates for elective office. Because of their training, longevity, and the fact that they are the custodians of the union's political memory, the UniServ directors play a major role in all political activities at the local level. It would be difficult to overestimate the significance of this fact.

The Teacher Unions, etc., supra, at 101-103.

In the NEA's publication, *How To Raise Money for NEA-PAC: Education's Defense Fund* (Exhibit 16), UniServ directors are charged with:

- Managing all political activities within their unit;
- Coordinating their activities with local [NEA-affiliate] PAC chairs;
- Training union PAC representatives and distribute materials; and
- Collecting and transmitting PAC contributions to the state PAC official within three days.

(Id.)

Indeed, in its 1994-95 Program Accomplishment Report the NEA disclosed that it expended \$310,354 educating and training affiliates in order to "increase their capacity and success in political campaigns." (Exhibit 12.)

NEA provided consultation and on-site assistance to build affiliate capacity in conducting successful political campaigns. Staff designed, developed and delivered training; provided strategic assistance on state legislative and ballot issues; and consulted affiliates on campaign strategy and support, polling, message development, and member communication and mobilization. *NEA developed and distributed a three part training series aimed at further developing the capacity of state and local affiliates to elect pro-education candidates, entitled Winning Campaign Strategies; Fundraising Voter Contact, and Volunteers. Sessions were held with UniServ staff to prepare them to deliver the training to local members.*

(Id. at 34 (emphasis added).) This is precisely the kind of political activity exempt organizations are required to disclose. *See e.g.* 26 CFR 1.527-2(c)(5).

The extent to which UniServ directors engage in political activities, as defined by the IRC, constitutes taxable NEA expenditures that must be reported to the IRS, but are not.

d. Washington State Ballot Initiative Campaign Contributions

In 1996, the NEA transferred a total of \$410,000 to the Washington Education Association in response to the WEA's request for assistance to aid with "candidate campaigns."⁶ As demonstrated below, the evidence indicates that the funds were transferred from the NEA's general revenue account for, among other things, electing candidates to public office. Yet no amount of these taxable expenditures were declared on the NEA's 1996 Form 990 tax return.

When confronted with allegations by the Washington State Public Disclosure Commission that the union engaged in improper campaign financing activities, the NEA argued that the amount of money involved was irrelevant as it merely made a "grant" to its Washington State affiliate, which had "the discretion to use the grant, in whole or in part, for communications with members, for communications with the general public, or direct contributions with independent political committee (sic) involved in the election." (Exhibit 17, October 17, 1997 NEA letter to State of Washington Public Disclosure Commission.)

Letters and memoranda between NEA officials, including its highest ranking executives and its Washington State affiliate, however, demonstrate that the NEA was well aware of the WEA's intention to use portions of its money for candidate campaigns.

⁶ Internal WEA documents presented to the Washington State Commission on Public Disclosure provide a glimpse into the UniServ staff member's role. The WEA's request for NEA funding for political campaign

Indeed, the NEA required details of the WEA's planned use of the funds and required the WEA to commit to following the NEA's campaign strategy. (See Exhibits 18 and 19, below.) The relevant correspondence provide as follows:

1. **April 4, 1996 WEA Request for Assistance for Campaign Year 1996.** (Exhibit 18.) The request notes "*NEA staff has been directly involved and fully informed of the planning of WEA's campaign for the 1996 elections. We have endeavored to keep NEA informed on every aspect of our plans and this request for financial assistance is consistent with information we have shared with NEA staff and managers on a continuing basis. We have followed the procedure recommended by NEA for seeking financial assistance. This week we were advised to forward this formal written request.*" (Attached to the request was a detailed "Election Program" budget.) (Id. (emphasis added).)
2. **April 9, 1996 WEA letter to NEA regarding request for assistance.** (Exhibit 19.) In this follow-up to the WEA's April 4, 1996 funding request, the WEA requests an audience with the NEA's executive committee to request support for the WEA's campaign plan, which WEA believed represented "the level of effort necessary to be successful in defeating the two initiatives and for *electing pro-education candidates to office.*" (Id. (emphasis added).)
3. **June 24, 1996 NEA \$150,000 general account check and transmittal memorandum.** (Demonstrating NEA general revenues as source of funds.) (Exhibit 20.)
4. **September 6, 1996 NEA \$250,000 general account check and transmittal memorandum.** (Demonstrating NEA general revenues as source of funds.) (Exhibit 21.)

The NEA's contributions of \$400,000 to the WEA are not isolated expenditures. Indeed, the NEA's letter to the Washington State Public Disclosure Commission notes that "[a]ny state affiliate, such as WEA, can request financial assistance from NEA for this purpose." (Exhibit 17, p. 6.)⁷

use noted that UniServ staff would "coordinate" political coalitions and also noted that UniServ staff reassignments for political duties would be made to implement the political plan.

⁷ The Washington State Public Disclosure ultimately charged the NEA with denying "the public the knowledge that a national organization was involved in campaign and lobbying activities in Washington

The NEA's 1996 payments to the WEA, part of which supported the election of candidates to public office, were not reported as taxable income on line 81 of the NEA's 1996 or 1997 Form 990 tax returns.

e. Other Examples and Indicators of Unreported NEA Political Activity

Other examples of NEA activities and expenditures that appear to be reportable political activity include:

1. Nearly one in eight 1992 Democratic National Convention Delegates were NEA members, "the largest single bloc – as it claims has been the case at every Democratic convention since 1976." (Exhibit 15, "The National Extortion Association?" *Forbes*, p. 74 (June 7, 1993).)⁸
2. The 1994-95 Program Accomplishment Report notes that the NEA expended \$397,461 to develop and maintain Political Data Systems and Services (PDSS) "resulting in the increased availability and use of strategic political data by state affiliates, local affiliates and the NEA." (Exhibit 12, NEA Program Accomplishment Report, 1994-95 p. 35.)
3. The NEA expended \$256,500 in "Affiliate Capacity Development" to:
 - enhance 20 state affiliate government relations programs through capacity building activities in the following areas: UniServ engagement, computer capacity, new member involvement, training of both staff and leaders, expansion of lobbying effectiveness, message development, the use of survey research, and PAC funding at the local, state, and national levels. Assistance

state" and the NEA agreed to pay a fine for its improper behavior. (Exhibit 22, "Teachers union faces new charges," *The Seattle Times*, December 13, 1997.)

⁸ The IRS must determine the extent to which the NEA is involved in identifying, selecting, and supporting these delegates.

was provided to local affiliates through state affiliates on school board and local levy programs.⁹

(Id.)

4. At the 1996 Democratic National Convention, “more delegates (405) were NEA members than the number of delegates from any state except California.” Lieberman, M., *The Teacher Unions, How the NEA and AFT Sabotage Reform and hold Students, Parents, Teachers, and Taxpayers Hostage to Bureaucracy* (Simon & Schuster, 1997), p. 66.)¹⁰
5. In the 1996 national elections, the NEA “agreed informally to focus its efforts on the Clinton campaign/Democratic National Committee list of 27 target states. Inasmuch as NEA-PAC plans to raise \$6.5 million in cash, and its cash contributions will undoubtedly be dwarfed by *its usual avalanche of in-kind contributions*, no one should underestimate the NEA’s commitment to the Clinton campaign.” (Exhibit 14, “Teachers’ Pet Party,” *The Weekly Standard*, p. 99 (June 24, 1996) (emphasis added).)
6. NEA and NEA-PAC staff in 1996 “now participate in all political and senior-staff meetings held by the Democratic party. Obviously, NEA coordination with DNC and Clinton White House initiatives is substantial.” (Id.)

⁹ These expenditures raise several issues: (1) whether building affiliate capacity in conducting successful campaigns classifies as a political expenditure; (2) whether maintaining and enhancing a Political Data System and Service classifies as a political expenditure; (3) whether providing PDSS training to state affiliates classifies as a political expenditure; and (4) whether the use of survey research classifies as a political expenditure. Presumably these activities are being undertaken to “influence the selection, nomination, election, or appointment . . . of candidates to a federal, state, or local public office, or office in a political organization, or the election of Presidential or Vice-Presidential electors. . . .” (Exhibit 1, Form 990 Instructions to line 81.)

7. A 1997 report prepared for the NEA by The Kamber Group acknowledges the NEA's political power and agenda, but makes a recommendation that the NEA apparently is heeding, i.e., to mask further its political nature and activities as a virtual appendage of the Democratic Party. In the report, the NEA is praised for its aggressive and successful political operations, but warned that its image was that of "an inside-the-beltway, highly partisan '800 pound gorilla.'" The Kamber report concludes:

We don't want to mess with success, and so we have no significant substantive suggestions about how the NEA makes its members' voices heard in the political and legislative arenas. But we do think politics and government relations should take a lower media profile for a while, *with the sole exceptions of occasions when the NEA endorses Republicans . . .*

(Exhibit 23, *An Institution at Risk*, An External Communications Review of the National Education Association p. 39 (emphasis added).)

8. During his 1999 Keynote Remarks at the 1999 NEA Representative Assembly, NEA President Bob Chase specifically singled out NEA State affiliates for their role in Senate campaigns:

NEA-New York, you did the whole country a favor by helping to defeat Al D'Amato and replacing him with Chuck Schumer. Thank You! Thank you North Carolina Association of Educators for giving the boot to Lauch Faircloth and electing Senator John Edwards. *Jesse Helms, you're next!*

Mr. Chase also congratulated the NEA's role in Congressional Elections,

For Congress, we supported pro-public education stalwarts in the Democratic Party – the folks who have helped Bill Clinton become the best 'education president' in history.

¹⁰ Again, the IRS must determine the extent to which the NEA is involved in identifying, selecting and supporting these delegates.

(Exhibit 24, Robert Chase 1999 NEA Representative Assembly Keynote Address.) The 1999 NEA Representative Assembly was not an NEA-PAC event, but an NEA event. Nonetheless, Chase used the occasion to urge, in part, the defeat of North Carolina Senator Jesse Helms.

9. According to a recent *Boston Globe* article, the NEA's effort to support Albert Gore's presidential campaign is extensive: "From their top union leaders in Washington to their 16,000 local associations and 2.5 million members in cities and towns, the teachers are involved in every aspect of the 2000 presidential race." (Exhibit 13, supra.)

B. IRS Jurisdiction and Enforcement Authority

1. The NEA Must Comply Fully With IRS Reporting Requirements.

IRC 6001 requires every person liable for any tax imposed by the tax code, including exempt organizations such as the NEA, to "keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary [of the Treasury] may from time to time prescribe." Exempt organizations are required to file an annual return,

stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe . . .

IRC 6033(a)(1).

Failure to comply with the IRC's reporting and record-keeping requirements subject an exempt organization to civil and criminal penalties under the IRC. *See* IRC Sections 6652 (Failure to file certain information returns); 6662(Imposition of accuracy-

related penalty); 7201 (Attempt to evade or defeat tax); 7203 (Willful failure to file return, supply information, or pay tax); 7206 (Fraud and false statements); and 7207 (Fraudulent returns, statements or other documents). Moreover, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under penalty of perjury. IRC 6065. While it is the taxpayer's obligation to comply with the IRC, it is the IRS's duty to enforce the tax code.

2. The IRS Is Charged With Enforcing Compliance With The Internal Revenue Code.

“The Secretary [of the Treasury] shall collect the taxes imposed by the internal revenue laws.” IRC 6301. In addition to the Secretary, the IRC provides for the appointment of a Commissioner of Internal Revenue whose duties and powers include “the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws and related statutes.” IRC 7803(a)(2)(A). The IRS has the discretion to require any taxpayer to make its tax returns and its supporting statements and records available for examination to show whether or not such taxpayer is liable for tax under the IRC. IRC 6001.

For the purpose of ascertaining the correctness of any tax return, the IRS is authorized to:

- (1) examine any books, papers, records, or other data which may be relevant or material to such inquiry;
- (2) summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material

to such inquiry; and (3) take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

IRC 7602(a).

The evidence presented in this complaint indicates that the NEA has failed to comply with its duties under the IRC to report fully its political expenditures, and, hence, its taxable income. Since at least filing its 1994 Form 990, the NEA has failed to fully report its political expenditures, thereby using tax-exempt funds for taxable purposes.

3. The IRS Must Determine Whether The NEA Is Subject To Civil And Criminal Penalties.

An exempt organization's failure to include any of the information required to be shown on a Form 990, or to provide correct information, exposes the organization to civil penalties pursuant to IRC 6652 and IRC 6662. IRC 6652 provides that an exempt organization the size of the NEA can be fined up to \$50,000 for each tax year for which the organization has failed to comply with its general reporting obligations. The evidence indicates that the NEA has failed to report the full extent of its political expenditures on its Form 990 tax returns for 1994, 1995, 1996 and 1997. Moreover, the NEA's failure to account fully for its political expenditures may be ongoing, implicating future tax return filings.

IRC 6662 imposes additional penalties for inaccurate reporting on an exempt organization's tax return. Where an underpayment of taxes results from an exempt organization's "negligence or disregard of rules or regulations," the organization is subject to a penalty in an amount equal to 20 percent of the portion of the underpayment. "Negligence" includes "any failure to make a reasonable attempt to comply with the

provisions of [the IRC]” and the term “disregard” includes “any careless, reckless, or intentional disregard.” IRC 6662(c).

IRC 6662(d) also provides additional penalties where income is substantially understated on a tax return. A “substantial understatement” of income tax occurs if the amount of the understatement for the taxable year exceeds the greater of 10 percent of the tax required to be shown on the return for the taxable year, or \$5,000.

Moreover, the IRS must determine whether the NEA has engaged in a willful attempt in any manner to:

evade or defeat any tax imposed by [the IRC] or the payment thereof . . . in addition to other penalties provided by law, [the NEA may] be guilty of a felony and, upon conviction thereof, shall be fined not more than \$500,000. . . .

IRC 7201. In addition, IRC 7203 provides that any person (or organization) required to pay any tax, or required to file a tax return and maintain records as required by law, shall be fined not more than \$100,000, or imprisoned not more than 1 year, or both, in the event those obligations are not fulfilled.

Finally, the NEA’s tax returns are verified as to their truthfulness by the NEA’s designated officer or agent in accordance with IRC 6033(a)(1). Accordingly,

any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than . . . \$50,000 (in the case of a corporation such as the NEA), or imprisoned not more than 1 year, or both.

IRC 7206. *See* IRC 7206 (Fraud and false statements).

The IRS must consider whether these criminal provisions have been violated and whether appropriate referrals should be made to law enforcement agencies.

III. CONCLUSION

IRS enforcement of the IRC enables the public, NEA members and non-member fee payers to receive accurate and complete information about the NEA's political activities. The evidence presented in this complaint indicates that for several years the NEA has failed to disclose the full extent of its political activities and expenditures as required by the Internal Revenue Code. As a result, the NEA appears to have submitted inaccurate tax returns that understate its taxable income.

Accordingly, the IRS, pursuant to IRC Section 501(a), should conduct a comprehensive functional and financial investigation to determine the full extent of the NEA's political activities and expenditures.¹¹ Where appropriate, the IRS should assess income taxes on tax-exempt resources used for political purposes and impose fines and penalties, including possible revocation of the NEA's tax-exempt status.

¹¹ A meaningful examination of the NEA's political activities and expenditures will require the IRS to interview UniServ directors and review UniServ directors' activities to determine the extent to which these NEA-funded officials conduct and supervise political activities that are not being reported by the NEA to the IRS.

Respectfully submitted,

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