

**BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE  
BEFORE THE INTERNAL REVENUE SERVICE**

Re: National Education Association, FEIN 53-0115260

**COMPLAINT**

**Request For Criminal Investigation**

Landmark Legal Foundation (“Landmark”) has submitted several thoroughly documented complaints with the Internal Revenue Service (“IRS”) detailing the National Education Association’s (“NEA”) use of tax-exempt general revenue to fund political activities, and the NEA’s serial failure to report those expenditures on their income tax returns since at least 1994. Moreover, by evading the Internal Revenue Code (“IRC”) reporting requirements, the NEA has not paid potentially millions of dollars in taxes owed to the United States government.<sup>1</sup>

The NEA’s income tax returns (“990s”), which are appended to Landmark’s pending complaints and are again provided to the IRS and Department of Justice herewith, demonstrate that the NEA has not reported any of its political expenditures to the IRS for nearly a decade.

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<sup>1</sup> Landmark is attaching to this criminal complaint its two major IRS Complaints (with exhibits) and its Department of Labor (“DOL”) Complaint (with exhibits). For reference purposes, Landmark’s June 23, 2000 IRS Complaint will be referred to as “Complaint A.” Landmark’s July 20, 2001 IRS Complaint will be referred to as “Complaint B.” Landmark’s April 19, 2002 DOL Complaint will be referred to as “Complaint C.”

The public record clearly demonstrates that the NEA, and those NEA officers who sign its tax returns and participate in the decision to submit these tax returns, are acting with knowledge and intent. Indeed, the NEA has been informed repeatedly over the last several years - through Landmark's complaints, congressional hearings and numerous news articles and editorials - that its tax returns do not account for its extensive use of tax-exempt membership dues in support of political activities. Yet, the NEA and its officials persist in submitting incomplete and misleading tax returns.

Therefore, Landmark requests that the Criminal Investigation Division of the IRS, as well as the Tax and Criminal Divisions of the Justice Department, immediately investigate the NEA's practices to determine the extent to which the NEA is in violation of the IRC, recoup potentially millions of dollars in taxes, fines and penalties owed the government, and pursue other law enforcement actions where appropriate.

Presented below, and in Complaints A and B generally, are several examples of the NEA using general treasury funds for political activities, which are reportable and taxable under the IRC. These examples, as well as numerous others contained in Landmark's IRS complaints, are meticulously sourced. Moreover, presented below are specific citations to sections of the IRC applicable to the NEA's political activities including: Section 6652 (Failure to File Certain Information Returns); Section 7201 (Attempt to Evade or Defeat Tax); Section 7203 (Willful Failure to File Return, Supply Information, or Pay Tax); and Section 7206 (Fraud and False Statements).

## **I. The IRS Requires Political Expenditures Reporting**

Labor unions with annual receipts exceeding \$200,000 are required to file a Form 990 tax return with the IRS. See IRC 6033. The instructions accompanying the Form 990 explicitly require that certain political expenditures must be reported by the exempt organization.

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 expense, the 501(c) organization must report the transferred funds as its own political expense 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. (Complaint B, Exhibits 2,3,4,5,6,7.) However, evidence presented in this complaint (and attached complaints with exhibits) indicates that the NEA has made substantial general treasury expenditures for political purposes.

## **II. The NEA Makes Significant General Treasury Expenditures On Political Activity**

Since 1997, Landmark has reviewed thousands of pages of internal NEA documents, including budgets, financial reports, strategic plans and guides. This material indicates that the NEA spends a significant portion of its general revenue on activities that should be classified as “political.” For example, NEA internal documents reveal that the NEA has spent:

(1) \$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.” (Complaint A, Exhibit 10, “NEA Strategic Plan and Budget,” 1998-2000, pp. 15-16.)

(2) \$386,000 for “organizational partnerships with political parties, campaign committees, and political organizations representing elected officials at the state and national level strengthened, increasing legislator’s commitment to support public education on a bipartisan basis.” (Id.)

(3) \$540,000 over two years for development of a “national political strategy... 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.)

(4) The 1998-1999 NEA Interim Financial Statements, prepared by NEA auditors, reported an actual expenditure of \$3,026,212 through April 30, 1999 for “Increased and lasting bipartisan political advocacy support.” Moreover, the NEA budgeted an additional \$2,033,650 for the remaining four months of the fiscal year ending on August 31, 1999. (Complaint B, Exhibit 23, “NEA Interim Financial Statements,” 1998-1999, pp. 32-33.)

(5) The NEA’s 1996 Strategic Focus Plan included: \$9.6 million to “build bipartisan constituencies among those running for and elected to public office to support public education.” Activities designed to accomplish this objective included: “Screening candidates for federal office; conducting political surveys for candidate evaluation; 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; 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.” (Complaint B, Exhibit 18, “NEA Strategic Focus Plan and Budget,” 1996-97, pp. 11-13.)

(6) The NEA’s Strategic Plan and Budget for fiscal years 2000-2002 indicates an allotment of \$1,993,735 for “[a] coordinated state-specific campaign developed and implemented to elect bipartisan pro-public education candidates in the 2000

general election.” (Complaint B, Exhibit 19, “NEA Strategic Plan and Budget, 2000-2002,” pp. 15-16.)

(7) During the 1996 election year, the NEA in coordination with other labor organizations such as the AFL-CIO, and political organizations such as the Democratic National Committee (DNC), engaged in an organized, systematic campaign to elect Democratic candidates. Documents reveal the following:

(i) In 1995 and 1996 a group known as the “National Coordinated Campaign Steering Committee” (“Steering Committee”) met between six and eight times for the purpose of planning the coordinated campaign.

(Complaint B, Exhibit 8, Federal Election Commission, Matter Under Review 4513, “April 17, 1998 Letter from Joseph E. Sandler, General Counsel of Democratic National Committee to Mark D. Shonkwiler, Federal Election Commission.”)

(ii) The Steering Committee met at DNC headquarters in Washington, DC; in New Orleans; LA; in August of 1995; and in Chicago, IL, during the time of the Democratic National Convention (August 26-29, 1996).

(Id.)

(iii) Attendees included representatives from the NEA, DNC, the Democratic Congressional Campaign Committee (“DCCC”), the Clinton/Gore ’96 Primary Committee and Clinton/Gore ’96 General Committee, and EMILY’s List. (Id.)

Moreover, the extent to which the NEA coordinated activities and commingled expenditures is demonstrated by a statement from the Etheridge for Congress Committee which participated in the Coordinated Campaign:

*When the draft plan is initialized in the state, it is forwarded to the DNC for review. If the plan meets the DNC's specifications, it is shared with the National Coordinated Campaign funding partners at the AFL-CIO, NEA, Emily's List (in targeted states), and other national campaign committees for review. When the DNC and its national partners, including the DSCC/DCCC/DGA/LCC, the AFL-CIO and the NEA agree on the contents of a plan, each national partner will give their funding commitment to the state. (Emphasis added.)*

(Complaint B, Exhibit 10, Federal Election Commission, Matter Under Review 4513, "Subpoena Response From Bob Etheridge For Congress Committee, Jan. 12, 1999.")<sup>2</sup>

### **III. NEA General Treasury Transfers For UniServ Activities**

In addition to general treasury expenditures, the NEA makes substantial outlays to support UniServ activities. Such outlays constitute political expenditures for the following reasons:

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 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 & Shuster 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

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<sup>2</sup> Additional political expenditures are documented in Landmark's complaints. (See e.g. Complaint A pp. 5-20, Complaint B pp. 13-15.)

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.” (Complaint A, 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 Association*, the NEA’s UniServ Policy Guidelines declare, in part, that:

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

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.

(Complaint A, Exhibit 8, “UniServ Policy Guidelines,” p.4.)

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.” (Complaint A, 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*, (Pro Active 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) assessment 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 NEA budget provided \$73.7 million for the UniServ program in 1998-99 and provides \$76.4 for 1999-2000. (Complaint A, 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 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 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* (Complaint A, 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.)

In fact, 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." (Complaint A, Exhibit 12, "Program Accomplishment Report," p. 34.)

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 1.527-29(c)(5).

The NEA reports significant outlays of tax-exempt funds to state affiliates, for, among other things, the type of UniServ activities described above. On the NEA's form 990 for fiscal year 1999-2000, the NEA reports an outlay of \$62,028,329 for "Grants to and Joint Projects with State and Local Affiliates."<sup>3</sup> (Complaint C, Exhibit 8, 1999-2000 NEA Form 990.) In 1998-1999 the NEA expended \$57,818,008 for "Grants to and Joint Projects with State and Local Affiliates." (Complaint C, Exhibit 7, 1998-1999 NEA Form 990.)

Indeed, the NEA continues to use its UniServ directors as political operatives. Randall J. Moody, the NEA's federal policy manager, recently emphasized the crucial role Uniserv directors play in politics; "[p]olitics move our policy. We [the NEA] work through Uniserve [sic]." Washington Times, June 30, 2003, at A04. Mr. Moody also states "[W]e [the NEA] may find some right-wing Republicans that we can take out." *Id.* Moreover, the NEA "will target 16 states where voters were most closely split in 2000 in hopes of replacing President Bush with a 'pro-education' Democratic president in 2004." *Id.*

The NEA will utilize the same tactics that were used in 2000 and 2002 to accomplish this goal. The NEA will "recruit 'moderate' House and Senate candidates; do polling for candidates it supports, particularly in 40 to 45 House races 'that really are contested'; raise funds for candidates; provide direct mail to members; and 'turn out the vote'." *Id.*

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<sup>3</sup> Labor unions with annual receipts exceeding \$200,000 are required to file with the Department of Labor a Form LM-2. The Form LM-2 is intended to provide union members with sufficient information to determine the labor unions' revenues and expenditures. 29 C.F.R. § 403.2(b)(2001). These figures were reported by the NEA on its latest LM-2 filing.

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, and for which taxes are owed.

#### **IV. Internal Revenue Code Violations**

##### **A. IRS Enforcement Duty**

“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 executions 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 an 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) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

#### IRC 7602(a)

Moreover, IRS regulations state that organizations subject to the tax imposed by 26 U.S.C. 527 are “subject to the same provisions, including penalties as are provided for corporations...” 26 CFR 1.527-8(a). Thus, when a tax-exempt organization expends general treasury funds for an exempt function (such as political activities) that organization is subject to any and all applicable penalties.

The evidence presented with this request for criminal investigation 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. Therefore, it is the obligation of the IRS and Department of Justice to enforce all relevant IRC and criminal provisions where warranted.

#### **B. Internal Revenue Code**

26 CFR 1.527-6(b)(5) lists “Nonpartisan activity” expenditures as an expenditure that would not constitute a taxable expenditure. “Nonpartisan activity” is defined as follows:

Expenditures for nonpartisan activities by an organization to which paragraph (a) of this section applies are not expenditures for an exempt function. Nonpartisan activities include voter registration and get-out-the-vote campaigns. *To be nonpartisan voter registration and get-out-the-vote*

*campaigns must not be specifically identified by the organization with any candidate or political party.* (Emphasis added.)

As set forth in this Complaint and as illustrated in Complaint B (Landmark's July 20, 2001 Complaint), the NEA engaged in a coordinated political campaign with political organizations including the Democratic National Committee (DNC), to elect particular Democratic candidates during the 1996 campaign cycle. Moreover, Landmark's complaints describe the extensive activities the NEA undertakes in furtherance of an individual's election to a local, state or federal office. (See, 26 CFR 1.527-2(c).)<sup>4</sup>

Accordingly, the evidence indicates that the NEA may have violated the following sections of the Internal Revenue Code.

**1.) Attempt To Evade Or Defeat Tax.**

The IRS must determine whether the NEA has engaged in a willful attempt in any manner to, "evade or defeat any tax imposed by this title [the IRC] or the payment thereof." IRC 7201(c). In the event the NEA has engaged in such conduct it may be guilty of a felony and, upon conviction thereof, shall be fined not more than \$500,000.

The statute of limitations for violations of this provision of the Internal Revenue Code is six years following the date of each respective filing. 26 U.S.C. § 6531.

**2.) Willful Failure To File Return, Supply Information, Or Pay Tax.**

Any person (or organization) required to pay any estimated tax or tax, or required to file a tax return and maintain records as required by law, who willfully fails to pay

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<sup>4</sup> The IRS has not resolved the issue of whether: (1) internal communications with members, stockholders and their families (but not the general public) that might involve support of particular candidates; (2) the conduct of nonpartisan registration and get-out-the-vote campaigns aimed at their members, stockholders and families and (3) the establishment, administration, and solicitation of contributions to separate segregated funds are considered taxable expenditures. (See 26 CFR 1.527-6(b)(3).) However, Landmark's complaints document extensive use of general treasury funds for political activities that clearly fall within the IRS definition of "political" even if the above – mentioned issues remain unresolved by the IRS.

such estimated tax or tax, make such return or keep such records shall be fined not more than \$100,000 or imprisoned not more than one year, or both. IRC 7203.

The IRS should determine whether the NEA's failure to supply political expenditure information on its tax returns and subsequent failure to pay tax on such expenditures was willful.

The statute of limitations for violations of this provision of the Internal Revenue Code is six years following the date of each respective filing. 26 U.S.C. § 6531.

### **3.) Fraud And False Statements.**

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).

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 one year or both. IRC 7206.

The statute of limitations for violations of this provision of the Internal Revenue Code is six years following the date of each respective filing. 26 U.S.C. § 6531.

The millions of dollars of political expenditures the NEA fails to document on its tax returns subject the NEA to this provision of the IRC.

### **4.) Perjury.**

The NEA's 990 tax returns are attested to their truthfulness under penalty of perjury. Perjury is defined, in relevant part, as follows:

Whoever in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully

subscribes as true any material matter which he does not believe to be true. Such violation shall be fined or imprisoned not more than five years (or both). 18 U.S.C. § 1621.

The statute of limitations for perjury is five years from the date of the offense. 18 U.S.C § 3282. In this case, such statute of limitations would begin to run on the date the 990 tax return was signed.

### **C. Statute of Limitations**

#### **1.) Criminal Liability**

Title 26 section 6531 of the United States Code sets forth the relevant statute of limitations for the following violations. The statute of limitations for criminal violations of the Internal Revenue Code is either three years or six years, depending upon the type of violation. Moreover, the statute of limitations for each of the alleged violations begins to run upon the date of the filing of the tax return. United States v. Habig, 390 U.S. 222, 88 S.Ct. 926, 19 L. Ed. 2d. 1055 (1968). In the case of the NEA, the statute of limitations begins when the NEA files its 990 with the IRS. The date that the NEA files its 990s varies from year to year. For example, the NEA's 990 tax return for tax year beginning September 1, 1994 and ending August 31, 1995 was signed and filed on April 4, 1996. The NEA's 990 for tax year beginning September 1, 1995 and ending August 31, 1996 was signed and filed on March 5, 1997.<sup>5</sup>

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<sup>5</sup> NEA tax returns that fall within the six year statute of limitations period include the NEA's 1996 990 that covers September 1, 1996 through August 31 1997. This return was signed on April 14, 1998. (Complaint A, Exhibit 4.) Consequently, the six year statute of limitations for prosecution of certain offenses will conclude on April 14, 2004.



## 2.) Financial Liability.

Title 26 section 6501 of the United States Code posits no statute of limitations “in the case of a false or fraudulent return with the intent to evade tax.” 26 U.S.C. § 6501(c)(1). Moreover, in cases where there is a “willful attempt in any manner to defeat or evade tax,” such tax “may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time” 26 U.S.C. § 6501(c)(2) (2002). See also, United States v. Powell, 379 U.S. 48, 85 S.Ct. 248, 13 L. Ed. 2d 112 (1964).

There can be no doubt that, since at least 1994, the NEA willfully filed tax returns that do not accurately report its tax liability to the IRS. The NEA has, and continues to, conceal its direct and indirect expenditures of millions of tax-exempt dollars on reportable political activities. Yet, the IRS has failed to take steps to collect potentially significant sums in unpaid taxes.

## V. Conclusion

Landmark filed with the IRS its first complaint against the NEA on June 23, 2000. The Foundation filed a second complaint on July 20, 2001. To the best of its knowledge, based on public representations by the NEA, the IRS Exempt Organizations Division apparently has failed to investigate the NEA base on the evidence set forth in either of Landmark’s complaints. As such, the government’s ability to initiate any proceedings or actions against the NEA for taxes, fines and penalties is being imperiled. Accordingly, the relevant law enforcement divisions of the U.S. Department of Justice and IRS must act immediately.

The NEA defends its actions by stating that the IRS conducted an audit in 1993 and “found no irregularities.” (Archibald, *NEA Challenged on Political Outlays*, Wash.

Times, April 7, 2003, at A1.) However, the general treasury expenditures and coordinated activity described in this complaint and in previous complaints involve transactions that occurred *since the NEA's 1994 tax filing*. Any audit conducted in prior to the 1994 filing obviously could not involve prospective transactions.

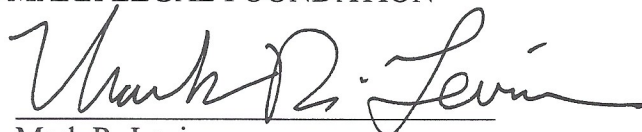
The evidence presented in this complaint and in the attached complaints indicates that the NEA has repeatedly failed to file accurate income tax returns.

It is incumbent on the Criminal Investigation Division and the Department of Justice's Tax and Criminal Divisions to enforce the IRC and ensure that monies owed the U.S. government are recovered, and fines and penalties imposed. Timely action is required to protect the federal treasury, the NEA's dues - paying members, and the public.

Respectfully submitted,

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