

April 27, 2009

TO: Interested Parties
FROM: Jim Kessler, Vice President for Policy
RE: The Tiahrt Amendment: Bad Crime Policy

"Let me state from the outset, I take a backseat to no one in my support of Second Amendment rights. I have supported nearly every law that protects the rights of law-abiding gun owners since first coming to Washington. But there is a special interest rider included in this Omnibus appropriations bill that is absolutely appalling. The House sponsor of this provision [Rep. Todd Tiahrt] has argued that it benefits gun owners, but the only gun owners it seems to help are those who have broken the law."

Senator John McCain,
January 21, 2004, Senate Floor

This year, Congress will likely take up the so-called Tiahrt Amendment again—language originally added to a 2003 Appropriations bill that sharply limits the information that the Bureau of Alcohol, Tobacco, Firearms, and Explosives can supply to law enforcement. This language was originally inserted out of concern from the gun rights lobby that crime gun trace data was being obtained through court orders and used in civil litigation against firearms manufacturers. Although such lawsuits against the gun industry are now banned under an act of Congress, the Tiahrt amendment remains.

The unintended consequence of Tiahrt has been to aid only the guilty—criminals who obtain guns illegally, criminals who sell guns illegally, and the rare gun store that operates criminally. It has contributed to the abysmal enforcement record of the previous Administration—enforcing only two of the 22 major federal gun laws on the books. And the repeal of this amendment is supported by nearly everyone who puts their life on the line to protect the innocent, as well as over 300 mayors.

In this memo, we offer background and communications guidance for those who wish to repeal this amendment. We believe strongly that supporters of repeal can effectively reach responsible gun owners and gun rights supporters—just as Sen. McCain effectively did in 2004.

Communicating to Gun Owners

Although the NRA opposes the repeal of Tiahrt (and they may be able to convince some ardent grassroots supporters to phone or write about this issue), this is now a pretend priority for them.

First, if this was a top of mind issue for them, they would not have endorsed Sen. McCain in 2008 or populated his campaign with top NRA brass.

Second, Tiahrt is simply a non-issue for gun owners. A bipartisan poll in 2007 found near-unanimous support among gun owners for repeal of the Tiahrt amendment.¹ The Tiahrt Amendment deals only with guns recovered in crimes, and the repeal of Tiahrt would simply allow ATF to provide the same data to police for use in criminal investigations that they provided before 2003.

Third, as noted above, the rationale for Tiahrt—civil litigation—no longer exists.

We urge supporters of repeal to communicate the following topline messaging:

- Support for the Second Amendment.
- Support for law enforcement.
- Support for common ground that relies upon local gun values.

As a supporter of the Second Amendment, I call for the repeal of the Tiahrt Amendment. This common ground legislation has won the support of police chiefs and sheriffs in 38 states, mayors in 44 states, and both President Obama and Senator John McCain—one of the nation's strongest gun rights advocate.

This appeals to all sides because it respects local gun owner values and targets only criminal behavior.

It will help police go after illegal gun trafficking, the guns for drugs trade along the Mexican border, the selling of stolen guns, as well as the under the table selling of firearms to convicted felons and underage gang members. It does so without having any impact on the legal sale or ownership of firearms.

The Impact of Tiahrt on Law Enforcement

The Tiahrt Amendment bars ATF from providing any information from the Firearms Trace System database except to “a Federal, State, local, tribal, or foreign law enforcement agency, or a Federal, State, or local prosecutor, solely in connection with and for use in a criminal investigation or prosecution.”

On its face, this may seem reasonable, but it has had a devastating affect on law enforcement. In its most simple explanation, this language has put law enforcement in the position of the proverbial “blind man and the elephant.” It limits state and local law enforcement tracing to information only about each single crime gun being traced without the benefit and the context of the entire crime gun database.

The full trace database, with data pooled from tens of thousands of individual crime gun traces, would let state and local authorities unlock patterns that identify illegal gun traffickers - the gun dealers than come up over and over again in gun traces or the gun buyers who come up repeatedly as a source of guns use in crimes. Such buyers who are associated with many crime gun traces are often

conducting “straw purchases,” illegally buying guns on behalf of criminals who can’t pass a background check.

The Tiahrt language allows these criminals to remain anonymous by preventing law enforcement from connecting the dots between crimes across jurisdictions. This is critical to law enforcement because of the nature of gun crime in America:

- In 90% of gun crimes, the person who used the gun in the crime was not the person who originally bought the gun.²
- 35% of crime guns were originally bought in one state and used in a crime in another.³
- 20% of crime guns are less than 3 years old.⁴
- 1% of the nation’s gun stores are the source of 57% of the nation’s crime guns (though they sell far less than 57% of the nation’s guns).⁵
- As many as 10% of crime guns are stolen and about 5% have obliterated serial numbers.⁶

Taken together, these facts indicate that massive gun trafficking operations exist that funnel guns across state lines to criminals, as well as to Mexico in the drugs-for-guns trade. The Tiahrt Amendment has effectively ended all state and local investigations of this lethal illegal market, because crime trace data cannot be shared between jurisdictions and the information that ATF provides to local law enforcement must now only pertain to the particular crime investigation for which that gun was used.

Law Enforcement Supports Repeal of Tiahrt

Not surprisingly, repeal of Tiahrt is supported by nearly all law enforcement.

- Nearly 200 sheriffs and police chiefs in 38 states have called for its repeal.
- 10 national police organizations have called for its repeal.
- 23 state law enforcement agencies have called for its repeal.
- More than 300 mayors in 44 states representing cities large and small throughout America have called for its repeal.

The Practical Impact of Tiahrt Crime Gun Trace Restriction on Criminal Investigations

There are myriad cases that have been negatively affected by this amendment. Rather than catalogue them, here is an example of the practical difference of what law enforcement received from a crime gun trace pre- and post-Tiahrt:

Imagine that a gun is recovered at a murder scene in Philadelphia before passage of Tiahrt. Then as now, the Philadelphia Police could request a trace. Then as now, the Tracing Center would provide police with the name of the original purchaser of the firearm (John Doe), the date it was sold (February 5, 2006), and the store that sold it (ABC Gun and Pawn, Jonesboro, Georgia).

In the days before Tiahrt, police had access to the full trace database that Tiahrt now prohibits. They could search and see the results on any other crime guns John Doe may have originally purchased. Local police would be informed of the types of crimes the John Doe guns were used in and where the crimes were committed. Police would also be informed of the number of crime guns traced back to ABC Gun and Pawn over the previous three years. With this information, they could reasonably determine whether Mr. Doe was a person of interest and whether ABC Gun and Pawn was a major crime gun source.

Under the Tiahrt regime, state and local police cannot access the data to connect the dots to John Doe, the gun trafficker. And ABC Gun and Pawn, if it is indeed a criminal enterprise, will likely never be under suspicion.

Two Other Tiahrt Amendment Restrictions

The Tiahrt Amendment includes two other restrictions that shield potential illegal behavior from law enforcement.

1. The Tiahrt Inventory Restriction inhibits investigations into the small, but lethal, group of firearms dealers who essentially operate a criminal enterprise. In 2007, routine ATF inspections at a small number of stores uncovered more than 30,000 missing guns.⁷ These are guns that seemed to have been sold without the criminal background check required by law. The Tiahrt restrictions prohibit mandatory inventory reports that ATF could use to determine the stores that habitually seem to be selling out the backdoor.
2. The Tiahrt Background Check Record Destruction requirement reduced the period for which the FBI held the records of “green-lighted” gun background check records from 90 days to 24 hours. This is a relatively minor provision, but in the past, it has allowed the NICS to correct mistakes that occurred when they accidentally approved someone who should have been denied a gun. This happens about 500 times a year, according to GAO.

The Enforcement Gap

Perhaps the oldest and most effective slogan developed by single-interest gun rights advocacy organizations is “we don’t need new laws, we should enforce the laws already on the books.” This is often followed by a statement about the “20,000 gun laws” in America. No one really knows how many gun laws exist, because most are local laws pertaining to hunting season or the illegality of discharging firearms in a state park. But there are 22 major federal gun laws on the books. Twenty of them are enforced so rarely they might as well not exist.

These aren’t petty crimes—these are the most serious gun crimes there are. In 2002 (the most recent year in which we have data), the Bush enforcement figures are as follows:⁸

- 197 gun trafficking cases under five federal statutes
- 27 corrupt gun dealer cases under three federal statutes

- 19 selling to minors and guns on school property cases under three federal statutes
- 202 stolen firearms cases under five federal statutes
- 578 “lie and buy” cases under two federal statutes
- 98 obliterated serial number cases under one federal statute

Conclusion

89% of Americans believe that individuals have a Second Amendment right to own firearms. 16% believe the right is absolute and allows for no restrictions, 73% believe the right allows for reasonable restrictions to keep guns out of the hands of criminals, and 9% believe there is no individual right.⁹

In your messaging, it is important to express support for this individual right while also expressing support for reasonable laws. In the case of the Tiahrt Amendment, this “reasonable laws” message is unnecessary, since repeal of the amendment would bring no new restrictions on guns or gun owners.

The vast majority of Americans—including gun owners—hold to this reasonable middle ground. They may not be represented by your mail, but they are represented in your districts. Messaged the right way, it is possible to appeal to common sense and to gun owners with confidence and honesty.

Endnotes

¹ Greenberg, Quinlan, Rosner Research and The Tarrance Group, January 10-15, 2007.

² BATF Crime gun traces, 2001-2006.

³ BATF crime gun traces, 2007.

⁴ Ibid.

⁵ Americans for Gun Safety, “Selling Crime,” Jim Kessler and Ed Hill, January 2004.

⁶ Bureau of Alcohol, Tobacco, and Firearms, “Youth Crime Gun Initiative Reports.”

⁷ Bureau of Alcohol, Tobacco, and Firearms, “Fact Sheet: FFL Compliance Inspections,” June 2008, available at <http://www.atf.gov/press/factsheets/0608-factsheet-ffl-inspections.pdf>

⁸ Americans for Gun Safety, “The Enforcement Gap,” Jim Kessler and Ed Hill, May 2003.

⁹ Penn, Schoen, and Berland, 2002.