

June 8, 2007

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

The House and Senate Appropriations Committees are likely to vote on a measure to repeal language 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, known as the Tiahrt Amendment, 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 gun manufacturers are now banned under an act of Congress, the Tiahrt amendment remains. The consequences of this are significant for law enforcement, and the time has come to remove this harmful provision.

Indeed, Third Way opposes the Tiahrt Amendment and supports its repeal for reasons of law and order.\* The Tiahrt Amendment, intended to thwart litigants in what some felt was abusive lawsuits against the gun industry, was made obsolete by passage of the Protection of Lawful Commerce in Arms Act. 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 this 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 200 mayors.

In this memo, we offer an argument and rationale for Members considering their vote on Tiahrt and communications guidance for those who wish to repeal it. We believe strongly that supporters of repeal can effectively reach responsible gun owners and gun rights supporters.

## **Repealing Tiahrt, Appealing to Gun Owners**

Although the NRA and others in the gun rights lobby oppose the repeal of Tiahrt (and they may be able to convince some ardent grassroots supporters to phone or write about this issue), the vast majority of gun owners simply don't care about this at all. And when asked, a bipartisan poll in January found 87% support among gun

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\* The founders of Third Way previously managed and worked for Americans for Gun Safety, a non-partisan organization that supported both gun rights and reasonable gun restrictions.

owners for repeal of the Tiahrt amendment.<sup>1</sup> That is because 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.

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

- Support for the Second Amendment right to own firearms.
- Support for law enforcement, who urgently demand the Tiahrt repeal.
- Criticism of the Bush Administration's failure to enforce existing gun laws.

*As a supporter of the Second Amendment and the right to own firearms, I support the repeal of the Tiahrt Amendment. As everyone agrees, this amendment does not affect the ownership, sale, or purchase of firearms in any way. But it does have a great impact on criminal investigations of violent crimes.*

*The Tiahrt Amendment is one of the reasons why the Bush Administration has failed to enforce twenty of the twenty-two major federal firearms laws on the books—laws like selling stolen guns, obliterating serial numbers, illegally trafficking in firearms, and selling firearms to convicted felons and underage gang members. More importantly, it has prevented local police from investigating crimes, because the Tiahrt Amendment severely restricts the information police can now receive about guns recovered at crime scenes.*

*The bottom line is that this amendment will have no impact on any person who can legally possess firearms but will have a great impact on bringing to justice some of the most violent criminals in America. That is why I am joining with over 400 police chiefs, sheriffs, and mayors in supporting the repeal of this law.*

## **The Impact of Tiahrt on Law Enforcement**

The Tiahrt Amendment bars ATF from providing any information from the Firearms Trace System database unless it is “solely in connection with and for use in a bona fide criminal investigation or prosecution and then only such information as pertains to the geographic jurisdiction of the law enforcement agency requesting the disclosure...”

On its face, this may seem reasonable, but it has had a devastating affect on law enforcement. The “bona fide criminal investigation” language is too broad and limits any data or request for data to a single, particular crime. The “geographic jurisdiction” language hamstring law enforcement from connecting the dots between crimes from other jurisdictions. And the Tiahrt language as a whole prohibits law enforcement from different cities from sharing most aggregate trace data information that is used to determine trafficking patterns.

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.

- 35% of crime guns were originally bought in one state and used in a crime in another.
- 35% of crime guns are less than 3 years old.
- 1% of the nation's gun stores are the source of 60% of the nation's crime guns (though they sell far less than 60% of the nation's guns).
- As many as 10% of crime guns are stolen and about 5% have obliterated serial numbers.<sup>2</sup>

Taken together, these facts indicate that massive gun trafficking operations exist that funnel guns across state lines to criminals. The Tiahrt Amendment has effectively ended all state and local investigations of this lethal illegal market, because crime trace data can not 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 200 mayors representing cities large and small throughout America have called for its repeal.

## **The Practical Impact of Tiahrt on Criminal Investigations**

There are a myriad of 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).

But in the days before Tiahrt, the local police could request and be told if other crime guns have been traced back to John Doe and when those guns were originally purchased by him. They 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.

In the post-Tiahrt world, John Doe, the gun trafficker, *won't* be caught. And ABC Gun and Pawn, if it is indeed a criminal enterprise, will likely never be under suspicion.

## Federal Gun Law Enforcement:

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:<sup>3</sup>

- 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.<sup>4</sup>

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.

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

<sup>2</sup> Bureau of Alcohol, Tobacco, and Firearms, “Youth Crime Gun Initiative Reports.”

<sup>3</sup> Americans for Gun Safety, “The Enforcement Gap,” Jim Kessler and Ed Hill, May 2003.

<sup>4</sup> Penn, Schoen, and Berland, 2002.