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Firearms-Related Appropriations Riders

Congress's spending power gives it substantial control over the activities of executive branch agencies. For instance, through appropriations riders, Congress can direct agencies to engage, or to refrain from engaging, in particular activities in order to receive appropriated funds. Over the years, Congress has inserted several firearms-related riders into appropriations bills. Perhaps the most well-known riders are the Dickey and Tiahrt Amendments, in reference to the Members of Congress who first advanced them. Still in force today, these riders restrict agencies within the Department of Health and Human Services (HHS) and the Department of Justice (DOJ) from engaging in certain activities related to federal firearms regulation.

The Dickey Amendment

For FY1997, Congress considered various ways of restricting the Centers for Disease Control and Prevention (CDC) from certain firearms-related activities. A precursor bill to the eventual omnibus appropriations act proposed reducing the CDC's budget by \$2.6 million—the same amount the CDC reportedly spent on gun violence research in the previous fiscal year. *See* H.R. REP. NO. 104-659, at 49 (1996) (Comm. Rep.). The funds remained intact in the omnibus appropriations bill, Pub. L. No. 104-208, 110 Stat. 3009-244 (1996), but, in the accompanying report, Congress earmarked the same dollar amount (\$2.6 million) for the study of traumatic brain injuries, H.R. REP. NO. 104-863, at 1040 (1996) (Conf. Rep.).

Representative Dickey introduced a proviso stating that “none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.” Pub. L. No. 104-208, 110 Stat. 3009-244 (1996). As a rationale for the measure, now known as the Dickey Amendment, he contended that the CDC's previous recommendations related to firearms “display[ed] an emotional antigun agenda” amounting to inappropriate “federally funded political advocacy.” 142 CONG. REC. H16, 804-05 (daily ed. July 11, 1996) (statement of Rep. Dickey).

Congress has included the Dickey Amendment (or similar language) in the CDC appropriations for each subsequent year. Since 2011, Congress has extended the funding restriction to all agencies within HHS. *See, e.g.*, Pub. L. No. 115-245 § 210, 132 Stat. 2981, 3090 (2018); FY, 125 Stat. 786, 1085 (2011).

HHS agencies disagree on exactly how much the Dickey Amendment actually limits them from researching gun violence. In a 2017 report to congressional requesters, the Government Accountability Office (GAO) recounted the CDC's interpretation of the Dickey Amendment:

CDC officials said that after the restriction was enacted, the agency interpreted it as a prohibition of activities related to gun control advocacy, but not as a restriction of activities that supported firearm injury-related data collection and scientific research. However, CDC officials added that the agency has limited its firearm-related research over time because, in 1997, its budget was reduced by an amount equal to what the agency had spent on such research, and because it learned that further reductions were possible if the research continued.

U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-665, PERSONAL FIREARMS: PROGRAMS THAT PROMOTE SAFE STORAGE AND RESEARCH ON THEIR EFFECTIVENESS 20 (2017).

Though the National Institutes of Health (NIH) is also subject to the Dickey Amendment, that agency reported to the GAO that it does not view the Dickey Amendment as so limiting. *See id.* The GAO explained, “NIH continues to have a broad research portfolio that supports violence prevention, including firearm safety,” albeit subject to funding instability. *See id.*

In recent years, public officials have sought to clarify the Dickey Amendment's limiting effect. For instance, in a January 2013 presidential memorandum to the Secretary of Health and Human Services, Engaging in Public Health Research on the Causes and Prevention of Gun Violence, President Obama directed the CDC “to conduct or sponsor research into the causes of gun violence and ways to prevent it . . . consistent with applicable law and subject to the availability of appropriations.” This directive implies that the executive branch did not interpret the Dickey Amendment as precluding the CDC from studying gun violence altogether. That view is consistent with an explanatory statement incorporated into the FY2018 omnibus; Congress remarked that, notwithstanding the Dickey Amendment, “the Secretary of Health and Human Services has stated the CDC has the authority to conduct research on the causes of gun violence.” Pub. L. No. 115-141 § 4, 132 Stat. 348, 350 (2018); 164 CONG. REC. H2700 (daily ed. Mar. 22, 2018) (explanatory statement submitted by Rep. Frelinghuysen).

The House-passed appropriations bill for HHS for FY2020, H.R. 2740, explicitly allocates \$25 million to the CDC “for firearm injury and mortality prevention research.” An identical amount was earmarked for NIH behavioral research, and an accompanying House report explained that this should include research to prevent self-directed violence, but firearms were not expressly mentioned. *See* H. REPT. 116-62 (2019). At the same time, however, a provision of the bill applicable to these sections contains

Dickey Amendment language: “None of the funds made available in this title may be used, in whole or in part, to advocate or promote gun control.”

The Tiahrt Amendments

The Tiahrt Amendments are a series of riders attached to appropriations for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI) within the DOJ. First introduced in 2003 and amended over time, today the Tiahrt Amendments are understood as prohibiting the ATF from engaging in various firearms-related activities. First, the agency is barred from “consolidating or centralizing” records maintained by federal firearm licensees (FFLs). Second, the agency cannot disclose to anyone (1) the contents from the Firearms Trace System database maintained by the National Trace Center, which tracks the movement of firearms recovered by law enforcement, or (2) information in records that FFLs must keep or report under 18 U.S.C. § 923(g), including when subjected to legal process in civil actions, with exceptions for law enforcement and national security purposes. Third, the ATF cannot implement a regulation that would require FFLs to take a physical inventory of their businesses. Finally, the FBI must destroy identifying information submitted during a background check within 24 hours of notifying an FFL that a firearm transfer may proceed. *See* Pub. L. No. 113-6, 127 Stat. 198, 248 (2013); Pub. L. No. 112-55, 125 Stat. 552, 609-10, 632 (2011); Pub. L. No. 108-199, 118 Stat. 3, 53, 95; Pub. L. No. 108-7, 117 Stat. 11, 433 (2003).

Congress added so-called futurity language to the Tiahrt Amendments, so they are viewed as permanent restrictions on the ATF and FBI unless Congress legislates to eliminate them. *See* U.S. GOV’T ACCOUNTABILITY OFF., GAO-16-464SP, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, ch. 2, §§ E.1-E.2 (4th ed., 2016 rev.). This differs from the Dickey Amendment, which expires each fiscal year and must be inserted in each new HHS appropriations bill for the funding restriction to continue.

Legal Implications

An agency or official subject to the Dickey or Tiahrt Amendments may face legal or other repercussions for failing to adhere to their restrictions. The Constitution declares that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. CONST. art. I, § 9, cl. 7. In other words, the federal government cannot spend money unless Congress exercises its Article I spending power to appropriate money for a particular purpose. Several federal statutes, including the Antideficiency Act, support Congress’s power of the purse by making it unlawful to spend in excess of appropriations. Moreover, an agency that spends money in a way that deviates from the purpose, amount, or period specified by Congress may risk offending its appropriating committees, potentially inviting informal or formal consequences from lawmakers. These consequences are discussed below.

As relevant here, the Antideficiency Act prohibits agencies from spending money in excess of statutory appropriations made by Congress. That is, if Congress has not legislated money to an agency for a particular purpose, the Antideficiency Act bars the agency from expending funds for that purpose. *See* 31 U.S.C. § 1341(a). When an agency discovers that it has violated the Antideficiency Act, it must report the violation to the President and Congress, and the report will be forwarded to the Comptroller General. 31 U.S.C. § 1351. A government employee or official who willfully violates Section 1341 may be fined up to \$5,000, imprisoned for up to two years, or both. 31 U.S.C. § 1350. Government employees who violate the Antideficiency Act may also face adverse personnel actions, including suspension without pay or termination. 31 U.S.C. § 1349.

When Congress specifies how an agency should spend its statutory appropriation in an accompanying report, the specification is legally binding on the agency only if Congress incorporates the report by reference in the appropriation statute. Otherwise, the report language is merely an expression of the committee’s or Congress’s expectations on how an appropriation will be spent. Still, although there may not be legal consequences (e.g., criminal penalties tied to violating the Antideficiency Act), an agency that declines to follow Congress’s appropriations recommendation may face political consequences for the agency. Thus, when the report accompanying the omnibus in the Dickey Amendment’s inaugural year instructed the CDC to spend the same amount of money it had spent studying gun violence on a specific, different research endeavor, the CDC could have suffered negative political consequences if it had ignored Congress’s stated expectation.

Under 31 U.S.C. § 3529, however, certain agency officials may ask the GAO (through delegation by the Comptroller General) for an advanced decision about whether a planned use of funds fits within a particular appropriation. For example, if the CDC is unsure about whether a particular study may violate the Dickey Amendment by “advocat[ing] or promot[ing] gun control,” the agency may ask the GAO for an advanced decision advising the agency on whether the planned use of funds is permissible. Likewise, the ATF could ask the GAO whether using certain computer technology to store certain firearms records would, when installed, constitute “consolidating or centralizing” FFL records in violation of the Tiahrt Amendments.

In any case, for as long as the Dickey Amendment language is included in HHS appropriations, and unless Congress legislatively alters the Tiahrt Amendments in the future, Congress’s appropriations riders will continue to limit these executive agencies’ firearms-related activities.

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