

Decision

Matter of: Government of the District of Columbia—Application of an Appropriations Act Prohibition and the Antideficiency Act to a D.C. Bill

File: B-331312

Date: March 8, 2021

DIGEST

Section 809 of the Financial Services and General Government Appropriations Act, 2019 (section 809) prohibited the obligation or expenditure of funds in fiscal year 2019 “to enact” rules, regulations, or laws legalizing the sale, possession, or use of any schedule I substance. The Mayor and the Council of the District of Columbia obligated and expended funds to take various actions on a bill that would legalize the sale of marijuana in the District of Columbia for nonmedical use. These actions included introducing the bill to the Council and referring it to various Council committees. However, the D.C. government has not enacted the bill into law. The D.C. government officials’ actions did not constitute enactment of the measure, and therefore did not “enact” the legislation into law. As such, the officials did not violate section 809 or the Antideficiency Act.

DECISION

This responds to a request for our decision regarding whether officials of the Government of the District of Columbia (D.C. government) violated section 809 of the Financial Services and General Government Appropriations Act, 2019 (section 809), and therefore, the Antideficiency Act, when they drafted, introduced, and referred to various committees Council Bill B23-0280, entitled the “Safe Cannabis Sales Act of 2019.”¹ The bill would legalize the sale of marijuana for non-medical use.

As discussed below, we conclude that D.C. government officials did not violate either section 809 or the Antideficiency Act when they obligated and expended funds in fiscal year (FY) 2019 to draft, introduce, and refer the bill to various D.C. Council committees. Section 809 prohibited D.C. government officials from obligating or

¹ Letter from The Honorable Andy Harris, M.D., House of Representatives, to Comptroller General, GAO (July 19, 2019) (Request Letter).

expending funds in FY 2019 “to enact” rules, regulations, or laws authorizing the sale, possession, or use of any schedule I substances, which are defined by the Controlled Substances Act. As discussed below, the phrase “to enact” encompasses only the actions required to finally approve a law, rule, or regulation. D.C. government officials obligated and expended funds in FY 2019 to draft, introduce, and refer the bill to various D.C. Council committees. However, the officials did not grant final approval to the measure. D.C. has not enacted the bill into law.

In accordance with our regular practice, we contacted the Office of the Mayor, the Office of the D.C. Attorney General, and the D.C. Council to seek factual information and their legal views on this matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP; Letter from Assistant General Counsel for Appropriations Law, GAO, to Attorney General, Government of the District of Columbia (Feb. 11, 2020); Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, Office of the Mayor, Government of the District of Columbia (Feb. 11, 2020); Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, Council of the District of Columbia (Feb. 19, 2020). The D.C. Attorney General provided a response that also spoke on behalf of the Office of the Mayor, the D.C. Council, and all District government officials and employees. Letter from Attorney General, Government of the District of Columbia, to Assistant General Counsel for Appropriations Law, GAO (Mar. 20, 2020) (Response Letter).

BACKGROUND

The Constitution gives Congress exclusive jurisdiction over the District of Columbia (District). U.S. Const., art. I, § 8, cl. 17. However, Congress in 1973 granted the District limited authority to self-govern through the District of Columbia Home Rule Act. District of Columbia Home Rule Act (Home Rule Act), Pub. L. No. 93-198, 87 Stat. 774 (Dec. 24, 1973) *codified* at D.C. Code §§ 1-201.01–1-207.71 (as amended).² The act established a system of government for the District within which the Council of the District of Columbia government (D.C. Council) has authority over any matters of legislation pertaining to the District that Congress has not expressly reserved for itself. D.C. Code §§ 1-203.02, 1-204.04, 1-206.02(a)(4).

Though the act granted legislative authorities to the D.C. Council, the act reserved to Congress the right to exercise its constitutional authority as legislature for the District by enacting legislation for the District at any time on any subject, including legislation to amend or repeal any act passed by the Council. D.C. Code § 1-206.01. Congress can use these powers to prevent the D.C. Council from legislating on

² Originally enacted as the District of Columbia Self-Government and Governmental Reorganization Act, the title was subsequently amended by Pub. L. No. 105-33, § 11717, 111 Stat. 251, 786 (Aug. 5, 1997).

certain matters. District officers and employees are also bound by the Antideficiency Act, which bars them from obligating funds except in accordance with appropriations enacted by Congress. 31 U.S.C. § 1341(a); B-324987, Jan. 30, 2014.

Since FY 1999, Congress has included in the annual appropriations for the District a provision prohibiting the D.C. Council from enacting a law to allow for the sale, possession, or use of marijuana in the District. The current version of this provision, which has remained unchanged since FY 2017, prohibits the D.C. government from obligating or expending any funds available to it to legalize or reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act, including marijuana. Continuing Appropriations Act, 2021, Pub. L. No. 116-159, div. A, § 101, 134 Stat. 710 (Oct. 1, 2020) (referencing Financial Services and General Government Appropriations Act, 2020, Pub. L. No. 116-93, div. C, title IV, § 809, 133 Stat. 2434, 2500 (Dec. 20, 2019)).

During the period when this general provision was in effect for FY 2019, D.C. government officials took various actions on a bill entitled the “Safe Cannabis Sales Act”—legislation that would “create a comprehensive regulatory scheme for the cultivation, manufacture, distribution, and sale of marijuana” in the District. Letter from Mayor, Government of the District of Columbia, to Chairman of the Council, Government of the District of Columbia (May 6, 2019), at 1 (Mayor Letter). First, the Mayor of the District of Columbia (Mayor) submitted the bill to the D.C. Council Chairman for introduction to the D.C. Council. *Id.* Then, the Chairman of the D.C. Council introduced the legislation to the D.C. Council. Safe Cannabis Sales Act of 2019, B23-0280, 2019 Sess. (D.C. 2019), <http://lms.dccouncil.us/Legislation/B23-0280?FromSearchResults=true#> (last visited Feb. 8, 2021). The legislation was then sequentially referred and subsequently re-referred to various Council committees. *Id.* In addition, the Chief Financial Officer of the District of Columbia prepared and filed a fiscal impact statement. Response Letter, at 1. To date, no further action has been taken on the legislation, and the bill has not been made law. Safe Cannabis Sales Act of 2019, B23-0280, 2019 Sess. (D.C. 2019), <http://lms.dccouncil.us/Legislation/B23-0280?FromSearchResults=true#> (last visited Feb. 8, 2021).

DISCUSSION

At issue here is whether D.C. government officials violated section 809 when they obligated and expended funds in FY 2019 to draft, introduce, and refer the bill to various D.C. Council committees.

Section 809 stated as follows:

- (a) None of the Federal funds contained in this Act may be used to enact or carry out any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of

any schedule I substance under the Controlled Substances Act (21 U.S.C. 801 et seq.) or any tetrahydrocannabinols derivative.

(b) No funds available for obligation or expenditure by the District of Columbia government under any authority may be used to enact any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act (21 U.S.C. 801 et seq.) or any tetrahydrocannabinols derivative for recreational purposes.

Pub. L. No. 116-6, § 809. Subsection(a) addresses the use of federal funds and prohibits the use of such funds “to enact or carry out” any law covered by the prohibition. Subsection (b) addresses the use of D.C. funds and prohibits only the use of such funds “to enact” a law covered by the prohibition. Key to the interpretation and application of section 809 is that both of its subsections prohibit the use of funds “to enact” particular laws. Therefore, we turn first to the meaning of the phrase “to enact.”

Generally, to interpret a statute, we begin with the text, giving ordinary meaning to statutory terms unless otherwise defined. *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013); *BP America Production Co. v. Burton*, 549 U.S. 84, 91 (2006). See also *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1738 (2020) (“This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President.”); *United States v. American Trucking Ass’ns*, 310 U.S. 534, 543 (1940) (“There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes.”).

Where Congress has not specifically defined a statutory term, the plain meaning of a term can be resolved by consulting a dictionary. See, e.g., *Carcieri v. Salazar*, 555 U.S. 379, 388 (2009) (referring to dictionaries to determine the ordinary meaning of the term “now”). Dictionaries define the term “to enact” as to take specific actions to make legislation into law. See, e.g., American Heritage Dictionary (5th ed. 2018), at 586 (defining “enact” as “to make into law”); Black’s Law Dictionary (7th ed. 1999), at 546 (defining “enact” as “to make into law by authoritative act; to pass”); “Enactment”, Oxford English Dictionary Online (Dec. 2020), available at <https://www.oed.com/view/entry/61523> (last visited Feb. 10, 2021) (defining an “enactment” as “an ordinance of a legislative authority, a statute”); United States Senate, “Glossary Term: Enacted,” available at https://www.senate.gov/reference/glossary_term/enacted.htm (last visited Feb. 4, 2021) (explaining that legislation becomes “enacted” when it “has passed both chambers of Congress in identical form, been signed into law by the president,

become law without his signature, or passed over his veto”).³ This indicates that District officials would violate section 809 only if they take authoritative action to make into law a measure that falls within the ambit of section 809.

Additionally, we do not construe statutory terms in isolation, but rather, in context of the whole statute. See 2A Sutherland, Statutes and Statutory Construction § 46:5 at 204 (7th ed.) (“A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section of the statute should be construed in connection with every other part or section to produce a harmonious whole.”). In both subsection (a) and subsection (b) of section 809, Congress prohibited the use of funds “to enact” any “law, rule, or regulation” to legalize schedule I substances. Pub. L. No. 116-6, § 809 (emphasis added). The term “law” is defined as a legally enforceable system of rules. See American Heritage Dictionary (5th Ed. 2018), at 996 (defining “law” as the “body of rules and principles governing the affairs of a community and enforced by a political authority”). Because legislation is only legally enforceable once it becomes an authoritative act, the coupling of the term “law” with the term “to enact” further indicates that “to enact,” as used in subsection (b), means to take actions to finally approve a law.⁴

The Home Rule Act provides that legislation the D.C. Council passes becomes law, subject to review by Congress, when, for example, the Mayor signs it or if the D.C. Council overrides the Mayor’s veto. D.C. Code § 1-204.04(e) (2020). Therefore, the term “to enact,” as used in section 809, bars District officials from taking actions on legislation that would legalize a schedule I substance, including the preparation of such legislation for the Mayor’s signature, holding D.C. Council meetings to override a Mayoral veto of such legislation; or taking a final vote to pass such legislation.

However, the term “to enact” does not include other actions that may precede enactment, such as to draft, consider, or hold hearings on legislation. Indeed, these

³ Similarly, our decisions use “enacted” to describe legislation that has been given legal effect. See, e.g., B-329739, Dec. 19, 2018 (“In the same way a cancellation proposal does not constitute a duly enacted law, an unenacted bill . . . is not a law.”); B-332417, Aug. 10, 2020 (describing an “enacted law” as having been “passed by both houses of Congress and signed into law by the President”); see also GAO, *Principles of Federal Appropriations Law*, Vol. 2, 3rd ed., ch. 8, § D.4, GAO-06-382SP (Washington, D.C.: Feb. 2006) (noting that legislation was under consideration by Congress and was passed by the Senate, “but was not enacted into law before the end of the fiscal year”).

⁴ The legislative history of section 809 also supports this interpretation. See 145 Cong. Rec. H6603, H6638 (daily ed. July 29, 1999) (statement of Rep. Barr) (explaining that the provision was intended to prevent D.C. government officials from using funds to legalize or reduce penalties for any schedule I substances).

precursory legislative actions can serve purposes other than the enactment of legislation. In creating the D.C. Council, Congress fashioned a legislature, and legislatures serve myriad functions, including the consideration and debate of issues impacting their constituents. *See Clarke v. United States*, 886 F.2d 404, 410 (D.C. Cir. 1989) (noting that the Home Rule Act vested legislative power with the D.C. Council and describing members of the D.C. Council as “‘legislators’ in every traditional sense”); Response Letter, at 2 (noting that hearings provide an opportunity for “robust debate” to “gauge support from both the Council and the citizenry”). Debate of a measure need not be premised on its ultimate enactment into law. The mere fact of consideration and debate is in itself valuable to the exercise of democracy. *Cf. Bond v. Floyd*, 385 U.S. 116, 136–37 (1966) (“Legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them.”).

Because the phrase “to enact” means to take actions to give legal effect to a measure, and because D.C. government officials took no such action here, they did not violate section 809.⁵

We note that while Section 809(b) (use of D.C. funds) forbids the use of funds “to enact any law, rule, or regulation to legalize . . . any schedule I substance,” section 809(a) forbids the use of “the Federal funds contained in this Act” not only “to enact” but, also, to “*carry out*” any such law, rule, or regulation (emphasis added). D.C. has not enacted this bill into law. Because no D.C. official either enacted or carried out any such law, rule, or regulation, no D.C. official violated either section 809(a) or 809(b). Accordingly, the officials also did not violate the Antideficiency Act.

⁵ The D.C. Attorney General has drawn a similar conclusion. Response Letter, at 1. However, we understand that the D.C. Attorney General in 2015 reasoned that the term “to enact” described “[e]ach step in the legislative process [that] is necessary for the enactment of a permanent measure.” Therefore, in contrast to the position he currently takes, the D.C. Attorney General in 2015 concluded that section 809 prohibited the D.C. Council from holding a hearing on proposed legislation to legalize the sale of marijuana in the District. Memorandum from Attorney General, Office of Attorney General, Government of the District of Columbia, to Chairman, Committee on Business Consumer and Regulatory Affairs, Council of the District of Columbia (Feb. 4, 2015), at 3. Subsequently, the D.C. Attorney General conducted a more comprehensive analysis and concluded that the term “enact” includes only the specific action taken to finally approve a law. Response Letter, at 2. For the reasons explained in this decision, our conclusions on the application of section 809 are consistent with the current views of the D.C. Attorney General as provided in his response to us. *See id.*

CONCLUSION

D.C. government officials did not violate section 809 of the Financial Services and General Government Appropriations Act, 2019, or the Antideficiency Act, when they obligated and expended funds in FY 2019 to draft, introduce, and refer a bill to various Committees because the officials did not obligate or expend amounts to enact the bill into law.

A handwritten signature in black ink that reads "Thomas H. Armstrong". The signature is written in a cursive style with a prominent horizontal line above the first name.

Thomas H. Armstrong
General Counsel