

## Abramski v. United States<sup>134</sup> S. Ct. 2259 (2014)

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**Abramski v. United States**  
**134 S. Ct. 2259 (2014)**

I. INTRODUCTION

The law “may have some holes in it.”<sup>1</sup> In his oral argument to the United States Supreme Court, Richard D. Dietz, attorney for former police officer Bruce Abramski, attempted to put issues regarding the Gun Control Act of 1968 into perspective.<sup>2</sup> In the 2014 Supreme Court case of *Abramski v. United States*,<sup>3</sup> the legality of “straw purchases” was the main issue, a process where a legal gun buyer purchases a weapon for another person who may not legally purchase or possess the firearm under U.S. law.<sup>4</sup> *Abramski* illustrated, more than anything else, that the statutory language Congress used to address wandering weapons was incredibly unclear. Current gun laws, passed in the Gun Control Act of 1968 and the Brady Handgun Violence Prevention Act, also known as the “Brady Act,” signed into law by President Clinton in 1993,<sup>5</sup> consider the problem of individual, single purchasers getting illegal access to weapons.<sup>6</sup> Yet, other markets for guns, including “straw purchases” create similar serious concerns.

In 2008, the Supreme Court, in the case of *District of Columbia v. Heller*,<sup>7</sup> held that the Second Amendment confers an “individual right to keep and bear arms.”<sup>8</sup> This decision signified that the right to own a gun for self-defense and home protection is deeply rooted in American history and the predominate reason for gun possession.<sup>9</sup> However, in recent years, gun legislation has been vigorously pushed by legislators and governors in an effort to curb abuses of the system.<sup>10</sup> Controversies surrounding these

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1. Transcript of Oral Argument at 16, *Abramski v. United States*, 134 S. Ct. 2259 (2014) (No. 12-1493).

2. *See generally id.*

3. 134 S. Ct. 2259 (2014).

4. Comm. On Oversight & Gov’t Reform, House of Representatives. 158 Cong. Rec., 112, H4178 (daily ed. June 28, 2012) *The Department of Justice’s Operation Fast and Furious: Accounts of ATF Agents 4* (2011). <http://www.gpo.gov/fdsys/pkg/CREC-2012-06-28/pdf/CREC-2012-06-28.pdf>. *See also* 18 U.S.C. § 922(d)(1)-(9).

5. Jill A. Tobia, *The Brady Handgun Violence Prevention Act: Does it Have a Shot at Success?* 19 SETON HALL LEGIS. J. 894, 888 (1995).

6. *See* Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (codified as amended at 18 U.S.C. §§ 921-928 (2006)); Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993) (codified as amended in scattered sections of 18 U.S.C.)

7. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2799, 554 U.S. 570, 595 (2008).

8. *Id.* at 2799 (holding that the Second Amendment is interpreted as guaranteeing a right to keep and bear arms to individuals, not only the militia, for the purpose of self-defense within the home).

9. *Id.* at 2804.

10. Justine McDaniel, Robby Korth, Jessica Boehm, *In States, A Legislative Rush to Nullify Federal Gun Laws*, THE WASHINGTON POST (Aug. 29, 2014),

barriers in relation to Second Amendment protections continue to polarize the nation.<sup>11</sup>

In *Abramski v. United States*, decided in June 2014, the Supreme Court considered the legal application of the Gun Control Act of 1968.<sup>12, 13</sup> Under this Act, before completing any sale, a firearm dealer must verif[y] the identity of the transferee by examining a valid identification document bearing a photograph.<sup>14</sup> The dealer must also retain the buyer's name, age, and place of residence.<sup>15</sup> Finally, the dealer must submit this information through the National Instant Background Check System to confirm the buyer is not disqualified from legally owning a gun.<sup>16</sup>

To implement these statutory requirements, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) created Form 4473, a document that requires the name, birth date, and address of the gun purchaser and lists all factors disqualifying a person from gun ownership.<sup>17</sup> In addition, the form includes a question requiring the purchaser to declare whether they are the actual purchaser of the firearm.<sup>18</sup> The purchaser is then required to sign the form, certifying that their statements are "true, correct, and complete."<sup>19</sup> In order to ensure that personal submissions are accurate, federal law imposes consequences on a purchaser who makes false statements regarding

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<http://www.washingtonpost.com/blogs/govbeat/wp/2014/08/29/in-states-a-legislative-rush-to-nullify-federal-gun-laws/>; *Now Is The Time: The President's Plan to Protect Our Children and Our Communities by Reducing Gun Violence*, THE WHITE HOUSE (Jan. 16, 2014), <http://www.whitehouse.gov/issues/preventing-gun-violence>; *Governor Patrick Signs Gun Safety Legislation to Help Curb Gun Violence, Protect Families and Build Safer Communities*, OFFICE OF THE GOVERNOR (Aug. 13, 2014), <http://www.mass.gov/governor/pressoffice/pressreleases/2014/0813-governor-patrick-signs-gun-safety-legislation-to-help-curb-gun-violence.html>.

11. See Ann Daniels, *The Online Gun Marketplace and the Dangerous Loophole in the National Instant Background Check System*, 30 J. INFO. TECH. & PRIVACY L. 757, 760 (2014).

12. 18 U.S.C. § 922(a)(6). The complete text reads:

(a) It shall be unlawful- (6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

*Id.*

13. *Abramski*, 134 S. Ct. 2259.

14. 18 U.S.C. § 922(t)(1)(C).

15. 18 U.S.C. § 922(b)(5).

16. See 18 U.S.C. § 922(t)(1)(A)-(B).

17. ATF Form 4473 (5300.9) (Revised April 2012).

18. *Id.* at 1 (Question 11.a asks, "Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearms(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you.")

19. *Id.* at 3.

“any fact material to the lawfulness of the sale.”<sup>20</sup> If any answers are untruthful, it is designated a crime punishable as a felony under Federal law.<sup>21</sup> To establish a violation of 18 U.S.C. section 922(a)(6), the prosecution is obligated to prove: “(1) the defendant knowingly made (2) a false or fictitious oral or written statement that was (3) material to the lawfulness of the sale or disposition of a firearm, and was (4) intended to deceive or likely to deceive a firearms dealer.”<sup>22</sup>

In *Abramski*, the Supreme Court reviewed the use of Form 4473, specifically the issue of how federal law applies to a so-called straw purchaser, a person who buys a gun on someone else’s behalf while falsely claiming that it is for himself on Form 4473.<sup>23</sup> The narrowly divided Court ruled that the misrepresentation of an actual gun buyer’s identity in a straw purchase violates federal law even if the actual purchaser was legally allowed to own a firearm.<sup>24</sup> The justices ruled 5-4 that Bruce Abramski, who had purchased a firearm on behalf of his uncle, was not the actual buyer of the weapon and that he broke the law when he checked the “yes” box on Form 4473 indicating he was the “actual transferee/buyer of the firearm.”<sup>25</sup>

The majority opinion, written by Justice Kagan, and joined by Justices Kennedy, Ginsburg, Breyer, and Sotomayor, held that “such a misrepresentation is punishable under the statute, whether or not the true buyer could have purchased the gun without the straw.”<sup>26</sup> This decision affirmed the Fourth Circuit’s conviction of Abramski for misrepresentation in his purchase of a firearm.<sup>27</sup> The dissent, written by Justice Scalia, with whom Chief Justice Roberts and Justices Thomas and Alito joined, argued that the federal background checking scheme, including Form 4473, simply does not apply to a transaction when both the person at the counter and the person who receives the gun are both legally eligible to own a firearm.<sup>28</sup> In addition, Justice Scalia articulated his disbelief that a majority of the court

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20. 18 U.S.C. § 922 (a)(6). The consequences of violating § 922 are implemented in 18 U.S.C. § 924(a)(4) which requires that “any person who knowingly makes any false statement or representation with respect to any information . . . shall be fined not more than \$5,000 or imprisonment not more than 5 years, or both.” *Id.*

21. ATF Form 4473, *supra* note 17 at 2.

22. *United States v. Harvey*, 653 F.3d 388, 393 (6th Cir. 2011). (The straw purchaser issue revolves specifically around the materiality element.)

23. *Abramski*, 134 S. Ct. at 2264.

24. *Id.* at 2275.

25. *Id.*

26. *Id.* at 2263.

27. *Id.* at 2275.

28. *See Abramski*, 134 S. Ct. at 2276 (Scalia, J., dissenting).

would interpret the law as requiring Form 4473, when the law says no such thing at all.<sup>29</sup>

In light of recent mass shootings at military bases, movie theaters, elementary schools, and college campuses, the dispute concerning gun legislation has been pushed even further into the public eye, and the Supreme Court has not been absent in this ever-present debate.<sup>30</sup> While gun control advocates review the recent case of *Abramski* as a victory, the decision merely demonstrates the tension between a purposivist and textualist interpretation of a federal statute, rather than determining the validity of gun ownership itself.<sup>31</sup> The narrow divide between the justices certainly displays an ideological spilt, but this is, alone, a statutory construction case.

## II. STATEMENT OF FACTUAL AND PROCEDURAL HISTORY

Petitioner Bruce Abramski, a former Virginia police officer, offered to purchase a Glock 19 handgun for his uncle, with his uncle's money, in Virginia.<sup>32</sup> Abramski's uncle, Angel Alvarez, sent Abramski a check for \$400, indicating in the memo line that the check was for a "Glock 19 handgun."<sup>33</sup> At the dealer, Abramski filled out Form 4473, and checked "yes" in response to Question 11.a, which asked whether he was the actual buyer of the gun.<sup>34</sup> He then signed the certification declaring that his statement was truthful, acknowledging that any false answer was punishable by federal law.<sup>35</sup>

Abramski's name was cleared through a background check and he then purchased the gun and transferred it to Alvarez.<sup>36</sup> After a search was conducted in Abramski's home on separate charges, police found a receipt for the handgun, but no handgun.<sup>37</sup> Abramski was then indicted by a grand jury for violating 18 U.S.C. sections 922(a)(6) and 924(a)(1)(A) by falsely affirming in Question 11.a that he was the gun's actual buyer.<sup>38</sup> Abramski

29. *See id.* at 2283.

30. *Deadliest U.S. Mass Shootings*, L.A. TIMES (Apr. 2, 2014), <http://timelines.latimes.com/deadliest-shooting-rampages/> (Fort Hood, November 5, 2009 & April 2, 2014, Aurora, Colorado, July 20, 2012, Sandy Hook Elementary School, December 14, 2012, UC Santa Barbara campus, May 23, 2014).

31. LINDA D. JELLUM, *MASTERING STATUTORY INTERPRETATION* 244, 17-32 (2008).

32. *Abramski*, 134 S. Ct. at 2264.

33. *Id.* at 2265. The arrangement had apparently been made because Abramski believed he could get a discount on the gun because of his previous police service. However, the Government contends that because he had been fired from his job two years earlier, he was no longer authorized to use the discount. *Id.*

34. *Id.*

35. *Id.*

36. *See generally id.*

37. *Abramski*, 134 S. Ct. at 2265.

38. *Id.*

moved to dismiss the charges, arguing that his response to Question 11.a was not “required by Chapter 44 of Title 18 of the United States Code.”<sup>39</sup> Abramski also argued that his response did not violate section 924(a)(1)(A) because Question 11.a was only required by the ATF and ATF “failed to follow the notice and comment procedures required under the Administrative Procedure Act (APA)”<sup>40</sup> The District Court dismissed both motions and Abramski pled guilty to the charges, reserving his right to challenge.<sup>41</sup> He was then sentenced by the District Court to five years of probation on each charge.<sup>42</sup> On appeal, the U.S. Fourth Circuit affirmed the conviction.<sup>43</sup> However, the court found a split in authority among circuit courts on whether section 922(a)(6) applies when the final recipient of the firearm was legally entitled to buy the gun himself.<sup>44</sup> The Supreme Court granted a writ of certiorari to determine whether Abramski committed a crime by buying a gun for someone else, but checking the “yes” box on Form 4473 indicating that he was the “actual transferee/buyer of the firearm.”<sup>45</sup>

### III. THE COURT’S DECISION AND RATIONALE

#### A. *The Majority Opinion*

Writing for the majority, Justice Kagan, joined by Justices Kennedy, Ginsburg, Breyer, and Sotomayor, began with a discussion of the provisions of the Gun Control Act of 1968 and how “federal gun law regulates licensed dealers’ transactions with ‘persons’ or ‘transferees’ without specifically referencing straw purchasers.”<sup>46</sup> Justice Kagan asserted that the language of the statute raises the question of whom federal law actually addresses as the actual buyer of the gun.<sup>47</sup> She stressed that to determine the statute’s intended focus; the court must “interpret the relevant words not in a vacuum, but with reference to the statutory context, ‘structure, history, and purpose.’”<sup>48</sup> Citing the case of *Huddleston v. United States*,<sup>49</sup> Justice Kagan identified two main goals of the statute: preventing guns from getting into the hands of criminals and others who should not have them, and

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39. *United States v. Abramski*, 778 F. Supp. 2d 678, 680 (W.D. Va. 2011).

40. *Id.*

41. *Abramski*, 134 S. Ct. at 2265.

42. *Id.*

43. *United States v. Abramski*, 706 F.3d 307, 319 (2013).

44. *Id.* at 315.

45. *Abramski*, 134 S. Ct. at 2265.

46. *Id.* at 2266.

47. *Id.* at 2267.

48. *Id.* (citing *Maracich v. Spears*, 570 U.S. (2013)).

49. *Huddleston v. United States*, 415 U.S., at 824, 825 (1974).

“assist[ing] law enforcement authorities in investigating serious crimes.”<sup>50</sup> Thus, straw purchases are included implicitly in this language because no part of the scheme would work if these purchases were ignored.<sup>51</sup>

The Court conceded that portions of the statute did allow for the transfer of firearms between individuals, with only one being the actual purchaser.<sup>52</sup> However, even if the statute does not explicitly address straw purchases, section 922, in regulating licensed dealers’ gun sales, “looks through the straw to the actual buyer . . . [a]nd no part of the [statutory] scheme would work if the statute turned a blind eye to straw purchases—if . . . the law addressed not the substance of a transaction, but only empty formalities.”<sup>53</sup> According to the Court, “straw arrangements are not a part of the secondary market, separate and apart from the dealer’s sale.”<sup>54</sup> The individual who sends a straw person to the dealer “is transacting with the dealer, in every way but the most formal; and that distinguishes a person from one who buys a gun, or receives a gun as a gift, from a private party.”<sup>55</sup> To ignore this issue would be to deem the statute ineffectual because the identification and background check would be of the wrong individual: the person who was buying the gun, and not the ultimate recipient.<sup>56</sup> This would allow those who cannot legally buy a gun, to enlist an intermediary to help them get a firearm.<sup>57</sup>

The actual purchaser might even accompany the straw to the gun shop, instruct him which firearm to buy, give him the money to pay at the counter, and take possession as they walk out the door . . . What the true buyer would not do—what he would leave to the straw . . . —is give his identifying information to the dealer and submit himself to a background check. How many of the statute’s provisions does that scenario—the lawful result of Abramski’s (and the dissent’s) reading of “transferee” and “person”—render meaningless?<sup>58</sup>

The statute’s provisions requiring dealers to maintain records of every gun purchase “can serve their objective only if the records point to the

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50. *Id.* (citing *Huddleston*, at 824, 825 (quoting S. Rep. No 1501, 90th Cong., 2d Sess. 22 (1968))).

51. *See Abramski*, 134 S. Ct. at 2268.

52. *Id.*

53. *Id.* at 2267.

54. *Id.* at 2271.

55. *Id.*

56. *See Abramski*, 134 S. Ct. at 2268.

57. *Id.*

58. *Id.* (Internal citations omitted).

person who took actual control of the gun(s).”<sup>59</sup> This is confirmed in other language of section 922, such as the prohibition against material representations to address not just the purchase of a firearm, but “in connection with the acquisition,” language that the Court says demonstrates Congress’ intent to address the practical realities of firearm transactions.<sup>60</sup> This follows the process of both civil and criminal penalties, in looking through a transaction’s “nominal parties to its true participants.”<sup>61</sup> In failing to identify Alvarez as the actual buyer, Abramski prevented the dealer from collecting identification information on the “actual transferee/buyer” required by the statute.<sup>62</sup> The Court noted, “Abramski thwarted application of essentially all of the firearms law’s requirements. We can hardly think of a misrepresentation any more material to a sale’s legality.”<sup>63</sup>

Abramski argued that even if he did make a misrepresentation on the form, the statement was not material because both buyers, Abramski and his uncle Alvarez, were legally eligible to purchase a firearm.<sup>64</sup> If the purpose of the statute is “keeping guns out of the hands of criminals and other prohibited persons,” when the actual purchaser is a legal purchaser, the statute “is not even implicated.”<sup>65</sup> The Court dismissed this logic, stating that the false statement on the form was material because if Abramski had answered that he was not the actual purchaser of the gun, the sale would not have gone forward because the dealer “could not have certified, as Form 4473 demands, its belief that the transfer was not unlawful.”<sup>66</sup> The sale would not have proceeded because the dealer would have lacked the information needed to conduct a background check on Alvarez and affirm his identity.<sup>67</sup> Justice Kagan made clear that any limitation on section 922(a)(6) would undermine the statute’s purpose and allow criminals to remain legally eligible to buy firearms.<sup>68</sup>

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59. *Id.* at 2269.

60. 18 U.S.C. § 922(a)(6) (2012).

61. *Abramski*, 134 S. Ct. at 2270 (citing *American Needle, Inc. v. National Football League*, 560 U.S. 183, 193, (focusing on “substance rather than form” in assessing when entities are distinct enough to be capable of conspiring to violate the antitrust laws)); *see also* *Gregory v. Helvering*, 293 U.S. 465, 470 (disregarding an intermediary shell corporation created to avoid taxes because doing otherwise would “exalt artifice above reality”).

62. *Abramski*, 134 S. Ct. at 2272.

63. *Id.*

64. *See id.* at 2273.

65. *Id.* at 2273 (citing Brief for the Petitioners at 29, *Abramski v. United States*, 134 S. Ct. 2259 (2014) (No. 12-1493), 2013 WL 6248448 at \*29.).

66. *Id.* at 2273.

67. *See generally Abramski*, 134 S. Ct. 2259; *see also* 18 U.S.C. § 922(b)(5), (t)(1)(B)-(C).

68. *Abramski*, 134 S. Ct. at 2273; *see also* *United States v. Polk*, 118 F.3d 286, 289 (C.A.5 1997) (eligible gun buyer used straw purchasers to secretly accumulate an “arsenal of weapons” for a “massive offense” against the Federal Government).



The Court concluded by addressing Abramski's final argument that while his indictment charged him with misrepresentation in his statement in response to Question 11.a on Form 4473, the information required in the question is not required by the statute to be kept in the dealer's records.<sup>69</sup> Thus, according to Abramski, he committed no punishable crime.<sup>70</sup> The majority contended that the statute has a provision that requires a dealer to "maintain such records of . . . sale or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe."<sup>71</sup> Therefore, the Attorney General's regulations compel the information required from the purchaser.<sup>72</sup>

*B. Dissenting Opinion by Justice Scalia*

Justice Scalia, with whom the Chief Justice Roberts, and Justices Thomas and Alito joined, dissented from the majority's analysis of section 922 regarding straw purchases and began by arguing that the false statement made by Abramski on Form 4473 was not "material to the lawfulness of the sale" because both Abramski and his uncle were legally eligible to purchase a firearm.<sup>73</sup> The dissent cited the case of *Kungys v. United States*,<sup>74</sup> where the court found that materiality could be determined by asking what would have ensued from official knowledge of the misrepresented fact.<sup>75</sup> According to Justice Scalia, the truth that Abramski was purchasing the gun for his uncle would not have made the sale unlawful.<sup>76</sup> He asserted that the majority's contention that the false statement was material is a "strained interpretation" of provisions that mention the "person" to whom the gun is sold, transferred or delivered.<sup>77</sup> For Justice Scalia, Abramski's uncle was not the "person" to whom the gun was sold; it was sold to Abramski, the one who handed over the money to the dealer.<sup>78</sup>

Justice Scalia opined that the correct method of interpretation for criminal statutes is to interpret them in a manner consistent with ordinary English language.<sup>79</sup> He used an analogy to emphasize his point,

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69. *Abramski*, 134 S. Ct. at 2273 (citing Brief for the Petitioners, *supra* note 65 at 32.).

70. *Id.*

71. *Id.* at 2274; *see also* 18 U.S.C. § 923(g)(1)(A).

72. *See id.* at 2274.

73. *Id.* at 2275 (Scalia, J., dissenting).

74. *Abramski*, 134 S. Ct. at 2275.

75. *Id.* (citing *Kungys v. United States*, 485 U.S. 759, 775 (1998)).

76. *Id.*

77. *Id.* at 2276.

78. *See id.*

79. *Abramski*, 134 S. Ct. at 2277 (citing *Flores Figueroa v. United States*, 556 U.S. 646, 650-652 (2009); *Jones v. United States*, 529 U.S. 848, 855 (2000); *Bailey v. United States*, 516 U.S. 137, 144-45 (1995)).

If I give my son \$10 and tell him to pick up milk and eggs at the store, no English speaker would say that the store “sells” the milk and eggs to me. And even if we were prepared to let “principles of agency law” trump ordinary English usage in the interpretation of this criminal statute, those principles would not require a different result.<sup>80</sup>

He further argued that while the majority attempts to support their argument with the language of the statute, the word “acquire” is defined to mean, “to come into possession, control, or power of disposal of,” which does not indicate “that title or ownership would be necessary.”<sup>81</sup> Therefore, because Abramski came into possession of the firearm, he *acquired* it, and the misrepresentation by Abramski was not “material to the lawfulness of the sale.”<sup>82</sup>

In addition, Justice Scalia also dissected the majority’s focus on the purpose of the statute.<sup>83</sup> He argued that the purpose of the Gun Control Act, articulated by the majority, is nowhere indicated in the text of the statute itself: “The majority’s purpose-based arguments describe a statute Congress reasonably might have written, but not the statute it wrote.”<sup>84</sup> He identified other contexts where the person at the counter is acknowledged by statute as not the final recipient of the gun and the purchase is still legal, including guns intended as gifts,<sup>85</sup> guns intended for resale,<sup>86</sup> and guns intended as raffle prizes.<sup>87</sup> Justice Scalia maintained that it was perhaps a part of the compromise process that Congress did not specifically identify straw purchasers, and “we must accept that Congress, balancing the conflicting demands of a divided citizenry, ‘wrote the statute it wrote’-meaning, a statute going so far and no further.”<sup>88</sup>

Justice Scalia spiritedly claimed that even if there is some ambiguity in the statute, the Rule of Lenity must be implicated, a concept that the majority failed to address, according to Justice Scalia, because it would defeat their construction of the statute.<sup>89</sup> “Where text, structure, and history fail to establish that the Government’s position is unambiguously correct . . . we apply the [R]ule of [L]enity and resolve the ambiguity in [the

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80. *Id.*

81. *Id.* (quoting *Huddleston*, 415 U.S. at 820).

82. *See id.* at 2277-78.

83. *See id.* at 2278-80.

84. *Abramski*, 134 S. Ct. at 2278.

85. *Id.* at 2278 (ATF, Federal Firearms Regulations Reference Guide 165 (2005)).

86. *Id.* at 2279.

87. *Id.*

88. *Id.* at 2280 (quoting *Michigan v. Bay Mills Indian Community*, 572 U.S. (2014)).

89. *See Abramski*, 134 S. Ct. at 2281.

defendant's] favor."<sup>90</sup> An accepted canon, the Rule of Lenity prevents the court from giving words of a criminal statute "a meaning that is different from [their] ordinary, accepted meaning, and that disfavors the defendant."<sup>91</sup> Here, with the lack of clarity regarding the language of section 922, the Rule of Lenity must be applied to *Abramski*.<sup>92</sup> The majority does not even mention the Rule of Lenity, except in a footnote responding to the dissent which concedes, "the text creates some ambiguity" but the "context, structure, history, and purpose resolve it."<sup>93</sup> For their refusal to apply the Rule of Lenity, Justice Scalia accused the majority of "[turning] its back on a liberty-protecting and democracy-promoting rule that is 'perhaps not much less old than construction itself.'"<sup>94</sup>

Finally, Justice Scalia asserted that while the Gun Control Act contains a long list of information that must be maintained in a dealer's records, it does not include a question regarding whether the transferee is buying the gun for an eligible third party.<sup>95</sup> According to Justice Scalia, the Act does not require the dealer to record this; it simply requires the archival of "the name, age, and place of residence" of the "person" to whom the firearm was "sold or delivered."<sup>96</sup> Adopting the view of the majority would mean that, as Justice Scalia argued, "[I]f the bureaucrats responsible for creating Form 4473 decided to ask about the buyer's favorite color, a false response would be a federal crime. That is not what the statute says."<sup>97</sup> In Justice Scalia's view, the statute that Congress enacted does not support the majority's decision to make it a federal crime for one lawful gun owner to buy a gun for another lawful gun owner.<sup>98</sup>

#### IV. ANALYSIS

##### A. Introduction

In *Abramski*, the Court made the wide-reaching declaration that an individual cannot buy a gun on behalf of someone else and claim to be the actual buyer, even if both parties are legally entitled to own a gun.<sup>99</sup> This is a diversion from the language of 18 U.S.C. § 922, which makes no mention

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90. *Id.* at 2281 (quoting *United States v. Granderson*, 511 U.S. 39, 54 (1994)).

91. *Id.* (quoting *Burrage v. United States*, 571 U.S. (2014)).

92. *Id.*

93. *Id.*; see also *id.* at 2272 n. 10.

94. *Abramski*, 134 S. Ct. at 2272 (quoting *United States v. Wiltberger*, 5 Wheat. 76, 95 (1820); 1 W. Blackstone, *Commentaries on the Laws of England* 88 (1765) ("Penal statutes must be construed strictly.")).

95. *Id.* at 2282.

96. *Id.*; see also 18 U.S.C. § 922(b)(5).

97. *Id.*

98. *Id.* at 2283.

99. *Abramski*, 134 S. Ct. at 2266.

of a prohibition against so-called “straw purchases.”<sup>100</sup> The majority, with its implication of legislative purpose, expanded the scope of the Gun Control Act of 1968, and as the dissent reasoned, the interpretation of this criminal statute, “punishes conduct that its plain language simply does not reach.”<sup>101</sup>

The opinions of both the majority and dissent focus on the statutory foundation for the sale of firearms.<sup>102</sup> The majority opinion identified the danger of an ambiguous law where felons and the mentally ill have unfettered access to firearms through intermediaries.<sup>103</sup> An interpretation of the Gun Control Act as an attempt to create a more responsible gun market is one both the majority and dissent can likely agree upon.<sup>104</sup>

However, the majority made too far a stretch when it suggested that the purpose of the Gun Control Act implicitly includes the requirement for information regarding whether the purchaser is the actual buyer.<sup>105</sup> If the role of the judiciary is to interpret the text of the law, relying too much on the subjective “purpose” of the Act is a slippery slope into legislative rule making.<sup>106</sup> This is not to say that the dissent’s segmentation of the argument was entirely persuasive either. While legislative history shows that the interpretation of the statute by regulatory agencies has changed in recent years, the argument that the legality of both parties to purchase guns makes the materiality of the sale irrelevant is misplaced.<sup>107</sup> For both the majority and dissent, the more accurate approach would have been to find the unique balance of purpose and text that understands the realities of the current gun market, while inducing Congress to amend the statute and resolve these ambiguities.

## B. Discussion

### 1. Response to Precedent

#### i. Congressional Intent

The ruling in *Abramski* was limited to an analysis of a federal criminal law, and did not include any claim concerning the right to own a gun under

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100. See generally 18 U.S.C. § 922.

101. *Abramski*, 134 S. Ct. at 2275 (Scalia, J., dissenting).

102. *Id.* at 2267, 2278.

103. See *id.* at 2268.

104. See *id.* at 2267, 2278.

105. *Id.* at 2269-70.

106. See *Abramski*, 134 S. Ct. at 2269-70.

107. *Id.* at 2274. The interpretation of 18 U.S. C. § 922 by ATF changed in 1995. See Brief for the Petitioners at 7-10, *Abramski* 134 S. Ct. 2259. Before, the ATF took the view that a straw purchaser’s misrepresentation counted as material only if the true buyer could not legally possess a gun. See Pet’r[’s] Br. at 7-8.

the Second Amendment.<sup>108</sup> This case involved a dispute concerning the statutory legitimacy of a form required by the ATF; in fact, a single question on that form.<sup>109</sup> Nonetheless, the legislative and judicial history of the gun control debate is relevant.<sup>110</sup> A representation of Congressional intent is indicated in the Gun Control Act's preamble,

The Congress hereby declares that . . . it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms . . . and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulation of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.<sup>111</sup>

The Supreme Court discussed congressional intent in the case of *Huddleston v. United States*.<sup>112</sup> In *Huddleston*, the Court stated that Congress passed the Gun Control Act because of a concern for keeping dangerous weapons from categories of potentially irresponsible persons, including convicted felons.<sup>113</sup> Its purpose, the Court found, was to “curb crime by keeping firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.”<sup>114</sup> Similarly, in *Barrett v. United States*,<sup>115</sup> the Court declared,

Congress . . . sought broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous. These persons are comprehensively barred by the Act from acquiring firearms by any means. Thus, § 922(d) prohibits a licensee from knowingly selling or otherwise disposing of any firearm . . . to the same categories of potentially irresponsible persons.<sup>116</sup>

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108. See generally *Abramski*, 134 S. Ct. 2259.

109. *Id.* at 2264.

110. See *id.* generally at 2270-71.

111. David Caplan, *Restoring the Balance: The Second Amendment Revisited*, 5 *FORDAM URBAN L. REV.* 31, 32 (1976); Gun Control Act of 1968, § 101, *publ.*, 82 Stat. 1213 (current version at 18 U.S.C. § 921 (2012)).

112. *Huddleston*, 415 U.S. at 824.

113. *Id.*

114. *Id.*

115. 423 U.S. 212 (1976).

116. *Id.* at 218.

In *Abramski*, the Government relied heavily on policy arguments surrounding the recordkeeping and background checks necessary for gun sales, indicating that allowing straw purchases would “frustrate important recordkeeping and screening obligations that Congress imposed on dealers for every retail and wholesale firearm transaction.”<sup>117</sup> In its amici brief, the Brady Center made a similar argument, and focused on the purpose of the background check requirement enacted in the Brady Handgun Violence Prevention Act of 1993.<sup>118</sup> However, these arguments imposed intent on members of Congress that perhaps never existed. If it can be inferred that Congress’ *intent* was to prevent guns from falling into the wrong hands, it can also be inferred, as Justice Scalia suggests, that Congress *intentionally* did not include language relating to that.<sup>119</sup>

The inference by the majority in *Abramski* that Congress held recordkeeping and tracing as important policy goals of the Gun Control Act may be true, but even then “its members may differ sharply on the means for effectuating that intent.”<sup>120</sup> As the dissent argued, *Huddleston* addressed the types of transactions covered by the statutory term “acquisition,” and said nothing about the distinct question of to whom a dealer “sell[s],” “transfer[s],” or “deliver[s]” a firearm.<sup>121</sup> The majority uses precedent to reaffirm that the Gun Control Act represented a more reliable gun market, but too many inferences were drawn in seeking to define the exact detailed purpose of the Act in terms of actual practice.<sup>122</sup>

### ii. Agency Deference

“The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.”<sup>123</sup> In the establishment of the ATF, Congress explicitly delegated authority to the agency to execute the provisions of the Gun Control Act of 1968.<sup>124</sup> When an issue of agency interpretation is brought before a court, the court is confronted with two distinct questions: whether Congress has directly

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117. Brief for Respondent at 25, *Abramski v United States*, 134 S. Ct. 2259 (2014) (No. 12-1493), 2013 WL 6805694 at \*25.

118. Brief of Brady Center to Prevent Gun Violence, the Major Cities Chiefs Association, and the International Brotherhood of Police Officers as Amici Curiae in Support of Respondent, at 10-12, *Abramski v United States*, 134 S. Ct. 2259 (2014) (No. 12-1493), 2013 WL 6907724, at \*10.

119. See *Abramski*, 134 S. Ct. at 2279.

120. Bd. of Governors of Fed. Reserve Sys. v. Dimension Fin. Corp., 474 U.S. 361, 373-75 (1986).

121. *Abramski*, 134 S. Ct. at 2277 (citing *Huddleston*, 415 U.S. at 819.).

122. See *id.* at 2270.

123. Morton v. Ruiz, 415 U.S. 199, 231 (1974).

124. David T. Hardy, *The Firearms Owners’ Protection Act: A Historical and Legal Perspective*, 17 CUMB. L. REV. 585, 604 (1986/1987).

spoken to the precise issue and if not, whether the agency understanding is based on a permissible construction of the statute.<sup>125</sup> If the construction is permissible, the court “may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of the agency.”<sup>126</sup>

In *Abramski*, the issue surrounded whether a question that ATF determined was necessary to enforce the law was appropriate, yet neither the majority nor the dissent addressed agency deference.<sup>127</sup> While an inclusion of agency analysis may not have changed the holding, the enquiry of the justices would have been very different. Justice Kagan did discuss agency delegation with regard to the implementation of the Gun Control Act; however, the question of whether the construction of the ATF form was reasonable remained unresolved.<sup>128</sup> It would have required reflecting on ATF’s choice of form “not in a sterile textual vacuum, but in the context of implementing policy decisions in a technical and complex arena.”<sup>129</sup> The discussion could have provided the much needed support for the majority’s holding.

In his dissent, Justice Scalia considered the interpretation of the text of the statute as one not demanding specific information, just “information required to be kept.”<sup>130</sup> Therefore, the ATF had deference in determining how to gather that information. However,

[b]ecause neither the Act nor any regulation requires a dealer to keep a record of whether a customer is purchasing a gun for himself or for an eligible third party, that question had no place on Form 4473 . . . [a]nd the statute no more criminalizes a false answer to an ultra vires question on Form 4473 than it criminalizes the purchaser’s volunteering of a false e-mail address on that form.<sup>131</sup>

Thus, Justice Scalia is not deciding the reasonableness of the question, he merely argued that the question is not required by the statute and therefore, should not be criminalized.<sup>132</sup>

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125. *Chevron, U.S.A., Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).

126. *Id.* at 844.

127. *See generally Abramski*, 134 S. Ct. 2259.

128. *Id.* at 2274.

129. *Chevron*, 104 S. Ct. at 863.

130. *Abramski*, 134 S. Ct. at 2282.

131. *Id.* at 2282-83.

132. *See id.*

## 2. Material Misrepresentation

The false statement that Abramski made in his purchase of a firearm was just that: a false statement.<sup>133</sup> Statutory provision section 922(a)(6) provides,

It shall be unlawful . . . for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from [a licensed dealer] knowingly to make any false or fictitious oral or written statement . . . intended or likely to deceive such [dealer] with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.<sup>134</sup>

Abramski never contested that he was untruthful.<sup>135</sup> His claim was that the misrepresentation that he was the gun’s “actual buyer” was not material to the lawfulness of the sale under section 922(a)(6) because his uncle Alvarez was legally eligible to own a gun.<sup>136</sup> The majority asserted that while the argument relies on the fact that federal law does not specifically address straw purchases, the structure, history, and purpose of the statute demonstrate that licensed dealers are to “look through the straw to the actual buyer.”<sup>137</sup> The majority claimed the reason for this, is that “Abramski’s reading would undermine—indeed, for all important purposes, would virtually repeal—the gun law’s core provisions,” including the purpose of the background checks.<sup>138</sup> In addition, the majority argued that Abramski’s view would defeat the point of section 922(c), which limits the sale of a gun “to a person who does not appear in person at the licensee’s business premises.”<sup>139</sup> Thus, the identity of the actual buyer is material to the sale.<sup>140</sup> In that sense, the majority’s analysis is reasonable; it would be incredibly difficult to enforce and regulate the sale of firearms if purchasers cut corners because of a belief that regulation details do not matter.<sup>141</sup> The dissent’s argument is less persuasive, as it diverged from the holdings in both *United States v. Morales*<sup>142</sup> and *United States v. Frazier*.<sup>143, 144</sup> In *Frazier*, the court of appeals wrote,

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133. *Id.* at 2282.

134. 18 U.S.C. § 922(a)(6); *see also Abramski*, 134 S. Ct. at 2264.

135. *Abramski*, 134 S. Ct. at 2266.

136. *Id.* at 2265.

137. *Id.* at 2267.

138. *Id.*

139. *Id.* at 2268.

140. *Abramski*, 134 S. Ct. at 2272.

141. *See id.* at 2268-2269.

142. 687 F.3d 697, 701 (6th Cir. 2012).

143. 605 F.3d 1271, 1280 (11th Cir. 2010).



The identity of the purchaser is a constant that is always material to the lawfulness of the purchase of a firearm under § 922(a)(6). Thus, it can be reasoned that although the lawfulness of a sale may change depending on the identity of the purchaser, the fact that the identity of the purchaser is material to the lawfulness of the sale does not.<sup>145</sup>

However, the dissent's impractical argument is overshadowed by the sweeping generalities of the majority regarding the purpose of the Gun Control Act.<sup>146</sup> Section 924(a)(1)(A) prohibits, "knowingly making any false statement or representation with respect to the information required by this chapter to be kept in the records of a federally licensed gun dealer."<sup>147</sup> Abramski claimed that his false statement did not violate this provision either because a buyer's response to Question 11.a is not "required . . . to be kept in the records" of a gun dealer.<sup>148</sup> It is true that the statutory language only requires the "name, age, and place of residence" of the "person" to whom the firearm was "s[old] or deliver[ed],"<sup>149</sup> and that after the passage of a law, regulatory agencies do have some discretion in interpreting and carrying out those laws to achieve the necessary ends.<sup>150</sup>

Ultimately, though, an investigation of the actual language of the text makes it clear that while Congress articulated circumstances when an individual can deliver a gun as a gift, resell a gun, or buy a gun to give in a raffle, Congress never specifically identified straw purchasers in the statute.<sup>151</sup> The majority departed from the Gun Control Act's plain text; and while purpose may have some role in statutory interpretation, it should not be the determining factor.<sup>152</sup> "It is important for the Court to remain faithful to the deliberate choices Congress made in these federal gun laws."<sup>153</sup> Certainly, many can agree that straw purchases open the door to illegal operations, but to suggest that Congress intended to stop straw purchases in a statute that made no mention of them is to misapply the text of the statute.<sup>154</sup>

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144. See *Abramski*, 134 S. Ct. at 2275 (Scalia, J., dissenting).

145. *Frazier*, 605 F.3d at 1280.

146. See *Abramski*, 134 S. Ct. at 2271.

147. *Id.* at 2264 (quoting 18 U.S.C. § 924(a)(1)(A)).

148. *Id.*

149. *Id.* at 2282 (quoting 18 U.S.C. § 922(b)(5)).

150. See *id.*

151. See 18 U.S.C. § 922; see also 18 U.S.C. § 924.

152. Reply Brief of Petitioner at 13, *Abramski v. United States*, 134 S. Ct. 2259 (2014) (No. 12-1493), 2013 WL 6907724 at \*13.

153. *Id.*

154. See 18 U.S.C. § 922; see also 18 U.S.C. § 924.

### 3. Rule of Lenity

Traditionally, if a criminal statute is ambiguous or unclear, the statute is interpreted by the judiciary in the light most favorable to the defendant.<sup>155</sup> Here, because there are two possible readings of section 922, one that requires information regarding the actual purchaser, and one that does not, there is inherent ambiguity.<sup>156</sup> Therefore, “ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.”<sup>157</sup>

There is ample precedent for the Rule of Lenity,<sup>158</sup> and as the dissent argued, it “forbids a court to criminalize an act simply because the court deems that act ‘of equal atrocity, or of kindred character, with those that are enumerated.’”<sup>159</sup> The majority argued that Congress, in its articulation that dealers must collect certain information, must collect *all* information about the purchase of the gun.<sup>160</sup> In contrast, this is not what the dissent inferred from a literal reading of the statutory text.<sup>161</sup> With such different interpretations, it cannot be said that the text is so unambiguous that the Rule of Lenity does not apply.<sup>162</sup> “Where text, structure, and history fail to establish that the Government’s position is unambiguously correct . . . we apply the [R]ule of [L]enity and resolve the ambiguity in [the defendant’s] favor.”<sup>163</sup>

Therefore, while arguments concerning purpose and materiality are certainly relevant to the discussion, ultimately, in a case where there is this much statutory disagreement, the Rule of Lenity should have played a role in the majority’s analysis. It would have likely resulted in an entirely different outcome, with a possible overturning of Abramski’s conviction, and more pressure on Congress to amend the statute to more clearly identify a prohibition against straw purchasers.<sup>164</sup> As Justice Scalia wrote, if the Rule of Lenity does not apply here, “we ought to stop pretending it is a genuine part of our jurisprudence.”<sup>165</sup>

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155. *Abramski*, 134 S. Ct. at 2281 (Scalia, J., dissenting).

156. *Id.*

157. *Id.* at 2280 (quoting *Skilling v. United States*, 561 U.S. 358, 410 (2010)).

158. *Moskal v. United States*, 498 U.S. 103, 108 (1990); *Scheidler v. National Organization for Women, Inc.*, 537 U.S. 393, 409 (2003); *Cleveland v. United States*, 531 U.S. 12, 25 (2000); *Crandon v. United States*, 494 U.S. 152, 158 (1990).

159. *Abramski*, 134 S. Ct. at 2281-82 (citing *Wiltberger*, 5 Wheat. at 96).

160. *See id.* at 2273.

161. *See id.* at 2281 (Scalia, J., dissenting).

162. *Id.*

163. *Id.* at 2281 (quoting *Granderson*, 511 U.S. at 54).

164. *See Abramski*, 134 S. Ct. at 2281.

165. *Id.*

#### 4. Impact of Decision

The impact of the decision in *Abramski v. United States* is wide-reaching, but to believe that the decision will completely shut down the practice of straw purchases is to be incredibly naïve.<sup>166</sup> However, some believe the decision could assist in the enforcement of background checks on gun purchasers, and this is entirely possible.<sup>167</sup>

For critics, the holding represents the Court's seemingly unquestioned ability to legislate from the bench.<sup>168</sup> From the statutes and provisions cited in the opinion, there is no language to suggest that Congress intended either to prevent straw purchases or require dealers to gather information pertaining to such.<sup>169</sup> Thus, the Court's holding, while perhaps rightful in merit, ignores the actual statutory language of the Gun Control Act, determining instead to apply its own interpretation of what it sees as the missing link.<sup>170</sup>

#### V. CONCLUSION

Simply put, *Abramski* is a case that dealt with the parsing of language.<sup>171</sup> However, underneath each opinion was a fundamental view regarding the extent of the Second Amendment: full and unfettered access to guns, or access with restrictions designed to protect public security.<sup>172</sup> In the extreme sense, either mentality can be dangerous. The Gun Control Act of 1968, like many other statutes, was the result of strenuous compromises in Congress and therefore, frustratingly vague.<sup>173</sup> The challenge, always, for the Court, is to find the appropriate balance between the functions of purpose and text in statutory interpretation.<sup>174</sup> Bruce Abramski's misrepresentation on Form 4473 was a material misrepresentation of the

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166. Brady Center Br., *supra* note 118 at 10.

167. Lawrence Hurley, "Supreme Court Rules Against 'Straw Buyer' in Gun Case," REUTERS (June 16, 2014), <http://www.reuters.com/article/2014/06/16/us-usa-court-guns-idUSKBN0ER2FG20140616> ("This is a very big and very positive decision that will save lives by keeping guns out of the hands of dangerous people," said Dan Gross, president of the Brady Center to Prevent Gun Violence).

168. Pete Williams, "Divided Supreme Court Shoots Down 'Straw Purchases of Guns,'" NBC NEWS (June 16, 2014), <http://www.nbcnews.com/news/us-news/divided-supreme-court-shoots-down-straw-purchases-guns-n132126> (George Mason University School of Law Professor commented on the ruling, "The Justices are once again legislating from the bench, which violates the Constitution, and enacting a retroactive criminal law, which is even worse.").

169. *See generally* 18 U.S.C. §§ 921-30.

170. *See Abramski*, 134 S. Ct. at 2275.

171. *Id.*

172. *See generally id.*

173. Jarrod Shobe, *Intertemporal Statutory Interpretation and the Evolution of Legislative Drafting*, 114 COLUM. LAW REVIEW, 807, 811 (2014).

174. John F. Manning, *Textualism and the Equity of the Statute*, 101 COLUM. LAW REVIEW 1, 126 (2001).

gun sale.<sup>175</sup> However, the question concerning whether the buyer was the actual buyer is not required by any statutory language.<sup>176</sup>

*Abramski* represents the Supreme Court's distinct split, not just between ideologies, but also between two competing modes of thought regarding statutory interpretation; those who read the text for what it means, and those who read the text for what it says.<sup>177</sup> In this case, neither approach really provided much clarity, but each will have long lasting implications. Like Richard Dietz stated in his oral argument, it is true that the law does occasionally have holes.<sup>178</sup> The controversial aspect of interpreting the law is always about the extent of the law's reach, a debate that will likely continue to divide the justices of the Supreme Court for many years to come.

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175. *Abramski*, 134 S. Ct. at 2272.

176. *See generally* 18 U.S.C. §§ 921-30.

177. JELLUM, *supra* note 31, at 17-32.

178. Transcript of Oral Argument at 16, *Abramski*, 134 S. Ct. 2259 (2014) (No. 12-1493).