



Written by [Bob Adelman](#) on January 23, 2014

## The Validity of “Straw Man” Gun Sales Goes to Supreme Court

On Wednesday the Supreme Court justices heard [oral arguments](#) in [Abramski v. United States](#), a case that, except for a miscarriage of justice, probably wouldn't have been heard at all.

At issue is whether Congress intended to have the Gun Control Act of 1968 keep guns out of the hands of criminals through requiring background checks of individuals purchasing guns, but not allow law-abiding individuals to purchase guns for someone else. It was a loophole in the law that various courts tried to plug by creating a [“straw man”](#) doctrine, which was later codified into law. In 1995, the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) modified its [Form 4473](#) to say that such straw man purchases were illegal on their face and wouldn't be permitted.



In a strange case that grew out of an illegal search, a former law-enforcement officer, Bruce Abramski, was found to have purchased a Glock 19 for his uncle, taking advantage of a “discount” offered by gun dealers to active and former law-enforcement officers.

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Abramski consulted with three different gun dealers near where he lived in Virginia to make sure he could make the purchase legally, even though his uncle lived in Pennsylvania. After being advised that he could, he deposited the check he received from his uncle in the amount of \$400 (a significant discount from the retail price of the pistol). On the check, on the memo line, was written the words “Glock 19 handgun.” He then went to a local dealer, completed the Form 4473, paid for the gun, left the store with it, and drove to Pennsylvania to see his uncle. Together they went to another gun dealer to complete the transfer, with his uncle successfully passing his background check.

When Abramski's residence was searched — without a warrant — in an unrelated criminal investigation (in which Abramski was exonerated), a receipt outlining the transfer was found. An investigation followed, Abramski was charged with lying on the Form 4473, and convicted. He appealed, and his case is now in front of the Supreme Court.

Here is the language that tripped him up, taken directly from the Form 4473:

Question 11.a: “Are you the actual transferee/buyer of the firearm(s) listed on this form? If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you.” (See Instructions for Question 11.a.)



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Those instructions were clear:

Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith. Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is NOT THE ACTUAL TRANSFEREE/BUYER of the firearm and must answer “NO” to question 11.a. The licensee [the dealer] may not transfer the firearm to Mr. Jones.

In appealing his conviction, lawyers for Abramski argued that the Gun Control Act of 1968 was never intended to restrict transfers between law-abiding individuals, and that the BATFE’s question on its Form 4473 was illegal.

The reason the Supreme Court agreed to take the case was, [according to the Legal Information Institute](#), to “settle a circuit court split regarding the lawfulness of this type of intermediary gun purchase.” It added that “this decision will also establish whether an individual may ever buy a gun on behalf of another buyer.”

Several commentators, trying to wrap their brains around the case, missed the primary issue involved: the government’s unceasing and ever-increasing desire to have the names, addresses, and phone numbers of every American citizen owning a gun.

From the Kent College of Law [came this debate on the issue](#):

1. Is a gun buyer’s intent to sell the firearm to another buyer a “material fact” under [the firearm disclosure statute]?
2. Is a federally licensed firearms dealer required to keep information regarding a purchaser’s intent to sell a firearm to another person?

In its “amicus curiae” brief [filed with the court](#), the NRA Civil Rights Defense Fund questioned “whether the Bureau of Alcohol, Tobacco, Firearms and Explosives exceeded its statutory authority by criminalizing otherwise perfectly lawful conduct by simply amending [its] form,” and it concluded that “there is no statutory authority for this prohibition and it violates the plain intent of Congress.”

Even the lawyers who wrote the petition for a [writ of certiorari](#) back in June asking the Supreme Court to take a look at the case, got it only half right:

Abramski ... asserted that the straw purchaser doctrine only applies when the ultimate recipient of the firearm is not eligible to buy or possess a gun. Thus, because Abramski’s uncle was legally entitled to buy and own a gun himself, federal law did not prohibit a gun dealer from selling the gun to Abramski even if the dealer knew Abramski later planned to resell it to his uncle.

As a result, Abramski’s answer to the “actual buyer” question was not “material to the lawfulness of the sale.”

Ken Klukowski, the senior legal analyst for Breitbart News, [also missed](#) what the government is really after:

Question 11a on Form 4473 is poorly worded. That wording was chosen by ATF, not Congress. If Question 11a instead asked if you are purchasing on behalf of someone who cannot legally purchase a firearm, then Abramski would honestly have said “no,” and there would not be any criminal conviction.

On the contrary, the question is perfectly worded. It is deliberately worded so that such transfers, which would fall outside of the ATF’s surveillance net, would be eliminated. The ATF wants to know where every gun, and gun owner, lives.



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That moment of clarity was provided during the oral arguments presented on Wednesday when the government [maintained](#) that the Gun Control Act of 1968 had two purposes: one, to ensure that those who possess firearms are legally eligible to do so, and two, to make certain “that the identities of those in possession of firearms are known.” The government asserted that it “has an interest in keeping tabs on both illegal and legal buyers.”

That’s why this case is so important. That’s why the government is fighting to retain the ATF’s particularly and specifically drafted question on its Form 4473.

At least one of the justices understood what’s at stake. Asked Justice Antonin Scalia:

What about somebody who is qualified to own a firearm? Can I take a firearm that I own and say [to someone] “It’s yours?” I don’t have to go through a firearms dealer, right? It’s my gun, and I can give it to somebody else who’s qualified.

Emily Miller, writing in the *Washington Times*, [nailed it](#). The real issue isn’t about negating the language in Form 4473. It isn’t about “straw man” purchases. It’s about the government’s continuing determined efforts to know where every firearm in the country is and who owns it. Wrote Miller:

There is no reason for the government to prevent, much less prosecute, a former member of law enforcement from buying a gun for his law-abiding uncle. The Supreme Court should overturn the appeals court, but more importantly, make clear that the government has no right to intervene in private gun transfers between honest American citizens.

The ultimate purpose of the Second Amendment, the prevention of tyranny, depends on the government not having a registry or knowing who is armed.

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