Gun Control Act of 1968 — Material Misrepresentation — Abramski v. United States

The Gun Control Act of 1968[1] seeks to prevent certain classes of people from purchasing firearms and to make it easier for law enforcement to trace guns used in crimes.[2] Two provisions of the Act play an important role in facilitating these goals: First, 18 U.S.C. § 922(a)(6) makes it unlawful for any "person" acquiring a firearm from a licensed seller to make false statements "with respect to any fact material to the lawfulness of the sale."[3] Second, 18 U.S.C. § 924(a)(1)(A) makes it unlawful for such a person to make false statements "with respect to the information required by this chapter to be kept in the records of a [licensed seller]."[4] The circuit courts were divided over whether these provisions made it unlawful for a "straw purchaser" who purchased a gun for someone who could legally purchase it himself to hold himself out as the "actual buyer."[5] Last Term, in *Abramski v. United States*,[6] the Supreme Court held that straw purchasers who present themselves as actual buyers have made a statutorily proscribed false statement because this representation conceals the actual buyer, and "[n]o piece of information is more important under federal firearms law than the identity of a gun's purchaser."[7] The majority's interpretation of the word "person" as relevant to § 922(a)(6)'s materiality requirement appropriately relied on statutory purpose to resolve apparent ambiguity in the statute, allowing the Court to preserve the effectiveness of key provisions of the statute. Given that interpretation, however, the Court's reading of § 924(a)(1)(A) was not compelled by statutory purpose, and because the statutory context also did not resolve the textual ambiguity, the rule of lenity should have broken the tie in favor of the defendant.

In 2009, Bruce Abramski Jr. offered to buy a handgun for his uncle, Angel Alvarez — even though Alvarez could legally purchase the gun for himself[8] — because Abramski believed he could get a discount.[9] Alvarez sent Abramski a check for $400, and on November 17, 2009, Abramski purchased a Glock 19 handgun for Alvarez from a

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[1] Pub. L. No. 90-618, 82 Stat. 1213 (codified as amended in scattered sections of 18 and 26 U.S.C.).

[2] *See* Abramski v. United States, 134 S. Ct. 2259, 2267 (2014).

[3] 18 U.S.C. § 922(a)(6) (2012).

[4] *Id.* § 924(a)(1)(A). "[T]his chapter" refers to 18 U.S.C. §§ 921–931, in which the Gun Control Act is codified, in part, at 18 U.S.C. §§ 921–928.

[5] *See Abramski*, 134 S. Ct. at 2265.

[6] 134 S. Ct. 2259.

[7] *Id.* at 2275.

[8] *See id.* at 2265.

[9] *Id.* at 2264–65.

federally licensed dealer in Virginia.[10] During the transaction, Abramski filled out Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Form 4473, which asked in Question 11.a: "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 firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you.*"[11] Abramski checked "yes."[12] He then transferred the handgun to Alvarez at a licensed dealer in Pennsylvania.[13] On July 19, 2010, federal agents found a receipt from the transfer while executing a search warrant on Abramski's house in connection with a bank robbery investigation.[14]

The government charged Abramski in the Western District of Virginia with (1) violating § 922(a)(6) by making a false statement material to the lawfulness of a firearm sale,[15] and (2) violating § 924(a)(1)(A) by making a false statement with respect to information required to be kept in a firearm dealer's records.[16] Abramski moved to dismiss both counts, arguing that his conduct was legal because he made no *material* misrepresentations, and that he legally transferred the gun to Alvarez.[17] The district court denied the motion, ruling from the bench that a false statement on Form 4473 violates §§ 922(a)(6) and 924(a)(1)(A).[18] Abramski filed a second motion to dismiss,[19] arguing that Question 11.a "is not required by [the Act]."[20] Chief Judge Conrad again denied the motion, concluding — in accord with the Third and Eleventh Circuits — that the Act requires recording the identity of the actual buyer, not the straw purchaser.[21] Abramski subsequently entered a conditional

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10 United States v. Abramski, 706 F.3d 307, 310–11 (4th Cir. 2013).

11 BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, OMB NO. 1140-0020, ATF FORM 4473: FIREARMS TRANSACTION RECORD PART I — OVER-THE-COUNTER (2012), https://www.atf.gov/files/forms/download/atf-f-4473-1.pdf [http://perma.cc/3MBF-WEKR]. Form 4473 requires the customer to certify that his answers "are true, correct, and complete," and that he understands that "answering 'yes' to Question 11.a if [he is] not the actual buyer is a crime punishable as a felony." *Id.* at 2. A seller is required to retain Form 4473 in its records for each transaction. 27 C.F.R. § 478.124a(b) (2014).

12 *Abramski*, 706 F.3d at 311.

13 *Id.* Abramski spoke to three licensed dealers before the purchase, and was advised that he could legally transfer the handgun to Alvarez at a Pennsylvania dealer. *Id.* at 310.

14 *Id.* at 311. The state's bank robbery charges against Abramski were dismissed. *Id.*

15 *Id.* at 312 & n.2.

16 *Id.* at 312 & n.3.

17 *Id.* at 312.

18 *Id.* at 312–13.

19 *Id.* at 313.

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

21 *See id.* at 681 (citing United States v. Soto, 539 F.3d 191, 199 (3d Cir. 2008) (finding that requiring only the straw purchaser's identity would too easily defeat the statutory scheme); United States v. Nelson, 221 F.3d 1206, 1209 (11th Cir. 2000) (same)).

guilty plea, reserving his right to challenge the rulings, and the court sentenced him to concurrent five-year probation terms.[22]

The Fourth Circuit affirmed. Writing for the panel, Judge King[23] held that "the identity of the actual purchaser of a firearm is a constant that is always material to the lawfulness of a firearm acquisition."[24] Judge King noted that the Fifth Circuit had held the opposite but found the court's reasoning unpersuasive,[25] and instead followed the Sixth and Eleventh Circuits.[26] Judge King also rejected Abramski's argument that his "yes" answer to Question 11.a "was not material to the recordkeeping requirements of § 924(a)(1)(A)," finding the statutory language unambiguously did not require a showing of materiality.[27]

The Supreme Court affirmed. Writing for the Court, Justice Kagan[28] began by describing the federal statutory scheme created by the Gun Control Act, noting its principal purpose is "to prevent guns from falling into" certain dangerous hands.[29] To accomplish this goal, the Act "establishes a detailed scheme to enable the [federally licensed] dealer to verify, at the point of sale, whether a potential buyer may lawfully own a gun."[30] In addition, the statute imposes certain recordkeeping obligations on the dealer, "to enable federal authorities both to enforce the law's verification measures and to trace firearms used in crimes."[31] The ATF developed Form 4473 to implement these requirements.[32] And "to ensure that the dealer can rely on the truthfulness of the buyer's disclosures," Congress criminalized certain false statements to the dealers.[33]

The Court observed that Abramski's primary argument was broader than any accepted by any court: that under § 922(a)(6), "a false response to Question 11.a is *never* material to a gun sale's legality, whether or not the actual buyer is eligible to own a gun," because the

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[22] *Abramski*, 706 F.3d at 313 & n.7.

[23] Judge Shedd and Judge Davis joined Judge King's opinion.

[24] *Abramski*, 706 F.3d at 316.

[25] *Id.* at 315 (citing United States v. Polk, 118 F.3d 286 (5th Cir. 1997), *abrogated by Abramski*, 134 S. Ct. 2259).

[26] *Id.* at 316 (citing United States v. Morales, 687 F.3d 697 (6th Cir. 2012); United States v. Frazier, 605 F.3d 1271 (11th Cir. 2010)).

[27] *Id.* at 317.

[28] Justices Kennedy, Ginsburg, Breyer, and Sotomayor joined Justice Kagan's opinion.

[29] *Abramski*, 134 S. Ct. at 2263. Section 922(g) prohibits felons, controlled substance users, and those who have been committed to a mental institution, among others, from possessing firearms. 18 U.S.C. § 922(g) (2012).

[30] *Abramski*, 134 S. Ct. at 2263. For example, the buyer, with limited exceptions, must appear in person, and the dealer must run a background check. *Id.*

[31] *Id.*

[32] *Id.* The Act requires dealers to maintain records that the Attorney General prescribes by regulation, like 27 C.F.R. § 478.124(b), which requires dealers to retain Form 4473. 18 U.S.C. § 923(g)(1)(A).

[33] *Abramski*, 134 S. Ct. at 2264.

provision is concerned only with the person at the counter.[34] The Court agreed with Abramski that the gun law does not "specifically referenc[e] straw purchasers," referring only to "persons" and "transferees."[35] But the Court found this terminology only raised the question of whether the "person" or "transferee" the statute addresses is "the conduit at the counter, or the gun's intended owner."[36]

Interpreting the Act's language "with reference to the statutory context, 'structure, history, and purpose,'"[37] and "common sense," the Court held that the statute "looks through the straw to the actual buyer."[38] Finding otherwise would "virtually repeal" the statute's "core provisions"[39] — the elaborate buyer-verification and record-keeping requirements[40] — and render certain provisions effectively meaningless. For example, § 922(c) "tightly restricts" gun sales to those individuals who do not appear in person at the store, allowing such sales only "to a small class of buyers subject to extraordinary procedures."[41] The Court reasoned that nobody would go through the effort required by § 922(c) when they could just hire a "deliveryman."[42] The Court also emphasized that understanding the statute to refer to "the real buyer" accorded with "other language in § 922" that "evinc[ed] Congress's concern with the practical realities, rather than the legal niceties, of firearms transactions,"[43] as well as "standard [judicial] practice . . . of ignoring artifice when identifying parties to a transaction."[44]

The Court also rejected Abramski's narrower argument that "a false response to Question 11.a is not material" where the underlying purchaser of the gun could have legally purchased it himself.[45] Because the sale could not have gone forward had Abramski answered Question 11.a honestly,[46] the Court held that his answer was material to the sale's lawfulness.[47] Additionally, the Court pointed out that the

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[34] *Id.* at 2266; *see id.* at 2265–66. Abramski had not raised this argument below and neither of his "principal *amici*" advanced the claim. *Id.* at 2265 & n.3.

[35] *Id.* at 2266.

[36] *Id.* at 2267.

[37] *Id.* (quoting Maracich v. Spears, 133 S. Ct. 2191, 2209 (2013)).

[38] *Id.*

[39] *Id.*

[40] *See id.* (citing Huddleston v. United States, 415 U.S. 814, 824 (1974)).

[41] *Id.* at 2268 (citing 18 U.S.C. § 922(c) (2012)).

[42] *Id.* at 2269.

[43] *Id.* The Court pointed out that the Act, for example, repeatedly references "'the sale *or other disposition*' of a firearm." *Id.* at 2270 (quoting 18 U.S.C. § 922(a)(6)).

[44] *Id.* at 2270. The Court rejected Abramski's argument that his reading could be understood as the outcome of congressional compromise, finding instead that the statute's focus on the federally licensed dealer to the exclusion of secondary markets likely was a legislative compromise, but that "straw arrangements are not a part of the secondary market." *Id.* at 2271.

[45] *Id.* at 2273.

[46] *See* Brief for the United States at 4–5, *Abramski*, 134 S. Ct. 2259 (No. 12-1493).

[47] *See Abramski*, 134 S. Ct. at 2273.

statutory scheme clearly intended for the "highly regulated" federally licensed dealer, with access to the federal background check database, to be responsible for "keeping firearms out of the hands of criminals" and keeping records "to aid law enforcement in the investigation of crime."[48] In contrast, Abramski's reading would give this duty to the "unlicensed straw purchaser," who would have fewer resources to determine if the actual buyer could legally purchase a firearm and no need to record the buyer's identity to help trace guns used in crimes.[49]

Lastly, the Court disposed of Abramski's argument that his conviction under the second count — regarding information required to be kept by dealers[50] — was invalid because his response to Question 11.a was required only by Form 4473, not by the Act.[51] A provision of the Act requires dealers to maintain records the Attorney General prescribes by regulation.[52] Because Form 4473 was required under such a regulation, the Court held that a false response "on that form . . . pertains to information a dealer is statutorily required to maintain."[53]

Justice Scalia dissented,[54] arguing that under the plain language of the statute, neither § 922(a)(6) nor § 924(a)(1)(A) reached Abramski's conduct. Justice Scalia maintained that a false response to Question 11.a "was not 'material to the lawfulness of the sale'"[55] under § 922(a)(6) because "ordinary English usage" made clear that Abramski, not Alvarez, was the "person" to whom the statutory requirements applied.[56] Justice Scalia disagreed that his reading would render certain provisions of the Act meaningless, arguing those provisions would still make it "harder for ineligible persons to acquire guns and easier for the Government to locate those guns in the future."[57] The dissent criticized the majority for rewriting the statute to make it "as effective as possible, rather than as effective as the language indicates Congress desired."[58] Justice Scalia also argued that even if the statu-

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[48] *Id.*

[49] *See id.* The Court also rejected any reliance on the fact that the ATF's view, until 1995, had been that a misrepresentation was only material where the true buyer could not legally possess a gun, stating that "criminal laws are for courts, not for the Government, to construe." *Id.* at 2274.

[50] *See* 18 U.S.C. § 924(a)(1)(A) (2012). Misrepresentation in § 924(a)(1)(A) need not be material to the sale's lawfulness. *See id.*

[51] *See Abramski*, 134 S. Ct. at 2274.

[52] *Id.* (citing 18 U.S.C. § 923(g)(1)(A)).

[53] *Id.*

[54] Chief Justice Roberts and Justices Thomas and Alito joined Justice Scalia's dissent.

[55] *Abramski*, 134 S. Ct. at 2275 (Scalia, J., dissenting) (quoting 18 U.S.C. § 922(a)(6)).

[56] *See id.* at 2277. Justice Scalia reserved the question of whether Abramski's conduct would be punishable under the statute had his uncle *not* been legally able to purchase a gun, and had Abramski had reasonable cause to know that. *Id.* at 2278 n.3.

[57] *Id.* at 2278. Justice Scalia argued that this view "[wa]s confirmed," *id.*, by the fact that the Act allows the buyer to buy the gun as a gift for someone else, or to resell the gun, or to use the gun as a raffle prize, *see id.* at 2278–79.

[58] *Id.* at 2279.

tory language were ambiguous, the rule of lenity should tilt interpretation in the defendant's favor, as it does "whenever, after all legitimate tools of interpretation have been exhausted, 'a reasonable doubt persists' regarding whether" the conduct falls under the statute.[59]

The dissent next argued that Abramski's § 924(a)(1)(A) conviction was invalid because the regulation requiring dealers to obtain Form 4473 listed what the form should request, and did not include whether the transferee is the actual buyer.[60] Justice Scalia argued that the majority's reading — that § 924(a)(1)(A) covers false answers to questions not required to be on Form 4473 — would make it a crime for a buyer to lie about his favorite color if Form 4473 asked about it.[61]

The majority properly interpreted the word "person" in the Gun Control Act to refer to the ultimate intended recipient of a purchased gun, making that person's identity "material" under § 922(a)(6); thus, the Court avoided gutting key provisions of the statute. However, the Court's interpretation of § 924(a)(1)(A) was unnecessarily broad. Given the majority's interpretation of "person," a narrower reading of § 924(a)(1)(A) — requiring dismissal of Abramski's second count — would have been more faithful to the tenets of statutory interpretation, while still allowing prosecution in cases central to the statute's purpose.

The majority was correct to find "person" ambiguous. The dissent claimed that the language unambiguously refers to the person standing at the counter, exchanging money for a gun.[62] Justice Scalia relied on a metaphor for this point: "[I]f 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."[63] This claim is, in fact, not so obvious. Under the dissent's reading, Alvarez could go into the store with Abramski, "instruct him which firearm to buy, hand him the money to pay for it, and then take possession of the firearm from [Abramski] immediately after the sale is completed."[64] If Justice Scalia went into the grocery store with his son, told him which egg carton to pick, handed him the necessary cash at the register, and took the eggs

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[59] *Id.* at 2281 (quoting Moskal v. United States, 498 U.S. 103, 108 (1990)). The majority responded that, contrary to Justice Scalia's assertion, the rule only applies "if, 'after considering text, structure, history and purpose, there remains a grievous ambiguity or uncertainty in the statute such that the Court must simply guess as to what Congress intended.'" *Id.* at 2272 n.10 (majority opinion) (quoting Maracich v. Spears, 133 S. Ct. 2191, 2209 (2013)).

[60] *Id.* at 2282 (Scalia, J., dissenting) (citing 27 C.F.R. § 478.124(c)(1) (2014)).

[61] *Id.*

[62] *Id.* at 2277.

[63] *Id.*

[64] Brief for the United States, *supra* note 46, at 16. This fact pattern is not just a hypothetical. *See, e.g.*, United States v. Bowen, 207 F. App'x 727, 729 (7th Cir. 2006) ("After talking with the shop's owner for a few minutes, Bowen[, the actual buyer,] selected a .357 magnum. [The straw purchaser] — who, unlike Bowen, had never been convicted of a felony — completed the necessary paperwork to make the purchase. . . . Bowen paid cash and took the gun after they left the store.").

from his son as soon as they were paid for, it is quite possible that an English speaker would say the store sold the eggs to Justice Scalia.

The dissent's reading of "person" as the individual to whom the store sells is allowed, but not compelled, by the statutory language; there was therefore an ambiguity in the statute, and the majority properly turned to secondary interpretive tools to resolve that ambiguity.[65] To start, a fundamental canon of interpretation weighs in favor of the majority's reading. "[T]erms in a statute should not be construed so as to render any provision of that statute meaningless or superfluous."[66] The dissent's construction would render § 922(c) functionally meaningless. Section 922(c) prohibits, "except in limited circumstances, the sale of a firearm 'to a person who does not appear in person,'"[67] and those limited circumstances require following "extraordinary procedures."[68] If § 922(a)(6) were read to allow straw purchases, it is hard to see why anyone would use the § 922(c) procedures,[69] making that provision essentially superfluous.

The propriety of the majority's reading of "person" is further underscored when viewed in the context of the Act's primary purposes: to prevent certain people from obtaining guns, and to make it easier to trace guns used in crimes.[70] Though Abramski's purchase of a gun for his uncle may not seem to implicate these purposes, his proposed reading of the statute would have rendered it a very poor tool in the accomplishment of those goals. Abramski is not the usual defendant in a § 922(a)(6) prosecution; the fact patterns are typically more sinister.[71]

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[65] *See Abramski*, 134 S. Ct. at 2267. Because "meaning can never be found exclusively within the enacted text," even modern textualists approve of the use of secondary tools of interpretation, John F. Manning, *What Divides Textualists from Purposivists?*, 106 COLUM. L. REV. 70, 78 (2006), including, sometimes, statutory purpose, *see, e.g.*, Asgrow Seed Co. v. Winterboer, 513 U.S. 179, 192 (1995) (Justice Scalia, writing for the majority, noting that "[w]hile the meaning of the text is by no means clear, this is in our view the only reading that comports with the statutory purpose").

[66] Beck v. Prupis, 529 U.S. 494, 506 (2000); *accord* United States v. Santos, 553 U.S. 507, 519 n.6 (2008) (plurality opinion of Scalia, J.) ("We do not normally interpret a text in a manner that makes one of its provisions superfluous.").

[67] *Abramski*, 134 S. Ct. at 2263 (quoting 18 U.S.C. § 922(c) (2012)). Only "individuals who have already had their eligibility to own a firearm verified by state law enforcement officials with access to the [background check] database" may purchase a firearm without going into the store. *Id.* at 2268 (citing 18 U.S.C. § 922(a)(6); 27 C.F.R. § 478.96(b) (2014)).

[68] *Id.* at 2268.

[69] *See id.* at 2269.

[70] *See id.* at 2267. This understanding of the statute's purpose accords with previous Supreme Court interpretations, *see, e.g.*, Smith v. Doe, 538 U.S. 84, 94 (2003); Huddleston v. United States, 415 U.S. 814, 824 (1974), as well as legislative history, *see, e.g.*, S. REP. NO. 90-1501, at 22 (1968).

[71] *See, e.g.*, United States v. Morales, 687 F.3d 697, 700 (6th Cir. 2012) (explaining that defendant straw purchased for another eligible purchaser as part of an "unlawful exporting scheme"); United States v. Juarez, 626 F.3d 246, 249 (5th Cir. 2010) (describing defendant's straw purchase of over twenty guns, including military-style assault rifles, for a man she knew only as "El Mano"); United States v. Frazier, 605 F.3d 1271, 1274–75 (11th Cir. 2010) (describing a straw purchase where the actual buyer smuggled guns to Canada to trade for drugs or money); United States v. Polk,

The dissent's reading of "person" would mean anyone buying a gun for criminal purposes could avoid both facing a background check and "leaving a paper trail by the simple expedient of hiring a straw,"[72] creating a large obstacle to accomplishing both goals of the Act. To argue that this reading is faithful to a legislative compromise[73] is to say that Congress compromised to render multiple provisions of its statutory scheme practically meaningless,[74] rather than the more plausible compromise of allowing gifts and resales, but not straw purchases.[75] Thus the majority's reading does not serve to rewrite the statute to make it more effective than the one that Congress passed, as Justice Scalia alleged;[76] rather, it is a reading that is faithful to the enacted statute, a reading that "make[s] sense rather than nonsense out of the *corpus juris*."[77]

The majority's reading of § 924(a)(1)(A), however, is not compelled by statutory text, structure, or purpose, and therefore the rule of lenity should have weighed in favor of dismissing the second count against Abramski. As indicted, Abramski was charged with violating § 924(a)(1)(A) by making a misstatement in response to Question 11.a.[78] Section 924(a)(1)(A) is broader than § 922(a)(6) in that "[i]t does not require that the false statement at issue be 'material' in any way,"[79] but narrower than § 922(a)(6) in that "[t]he false statement must relate to 'information required by this [Act] to be kept in [a dealer's] records.'"[80]

The key question in determining whether a false answer to Question 11.a violates § 924(a)(1)(A) is whether the answer to Question 11.a must be kept under the Act. The Act explicitly requires recording only the purchaser's name, age, and residence.[81] The majority's reading of

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118 F.3d 286, 289–90 (5th Cir. 1997) (explaining that defendant used straw purchaser to obtain more than forty guns for "an offensive that would include destroying" government buildings), *abrogated by Abramski*, 134 S. Ct. 2259.

72 *Abramski*, 134 S. Ct. at 2269; *see also* Transcript of Oral Argument at 6–7, 11–12, *Abramski*, 134 S. Ct. 2259 (No. 12-1493) (Alito, J.) (suggesting that requiring background check of a straw purchaser would serve no purpose).

73 *Abramski*, 134 S. Ct. at 2280 (Scalia, J., dissenting).

74 *See* Transcript of Oral Argument, *supra* note 72, at 12 (Alito, J.) ("[W]hat you're saying is [Congress] did a meaningless thing. That was the compromise. They would do something that's utterly meaningless.").

75 *See Abramski*, 134 S. Ct. at 2271 ("The line Congress drew between those who acquire guns from dealers and those who get them as gifts or on the secondary market, we suspect, reflects a host of things, including administrative simplicity and a view about where the most problematic firearm transactions — like criminal organizations' bulk gun purchases — typically occur."); Transcript of Oral Argument, *supra* note 72, at 47 (Palmore) ("[A] gift recipient is in no sense a party to the gift giver's purchase of the gift. . . . The purchaser is not acting at the direction and control of the gift recipient. And in ATF's experience, there's not a problem with gift recipients.").

76 *Abramski*, 134 S. Ct. at 2279 (Scalia, J., dissenting).

77 W. Va. Univ. Hosps., Inc. v. Casey, 499 U.S. 83, 101 (1991) (Scalia, J.).

78 *See Abramski*, 134 S. Ct. at 2274.

79 *Id.*

80 *Id.* (third alteration in original) (quoting 18 U.S.C. § 924(a)(1)(A) (2012)).

81 18 U.S.C. § 922(b)(5).

§ 924(a)(1)(A) is plausible: within the Act is a provision requiring dealers to maintain whatever the Attorney General prescribes by regulation,[82] and one such regulation requires dealers to keep Form 4473 for each purchase.[83] This reading is weakened, however, when § 924(a)(1)(A) is read in conjunction with its surrounding text, which "permits forfeiture of a firearm if it is involved in a violation of any 'provision of this [Act] *or any rule or regulation promulgated thereunder*.'"[84] Such language would be superfluous if "this [Act]" was always meant to include regulations promulgated in accordance with it.[85] In addition, the regulation that requires keeping Form 4473 enumerates its required contents[86] — but does not include Question 11.a's substance: "whether the transferee is buying the gun for an eligible third party."[87]

Because the narrow text of the provision itself is ambiguous, it is appropriate to look to the context of the whole statute.[88] Here, the context, though not dispositive, weighs against the majority's reading. Conviction under § 924(a)(1)(A) is significantly easier to obtain than under § 922(a)(6) — only the latter requires that the false statement be "intended or likely to deceive" the dealer, or that the false statement be about a "fact material to the lawfulness of the sale."[89] This distinction implies that Congress considered § 924(a)(1)(A) false statements to be inherently serious enough so as to not require the government to prove materiality or intent to deceive.[90] Were every item on Form 4473 meant to be included under § 924(a)(1)(A), that would essentially swallow § 922(a)(6)'s materiality and intent-to-deceive elements.[91]

In addition, the Court's reading is not necessary to allow the statute to function according to its purpose; under the majority's reading of "person" as relevant to § 922(a)(6), the actual purchaser's name, age, and residence are statutorily required to be kept.[92] Therefore

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[82] *See id.* § 923(g)(1)(A).

[83] 27 C.F.R. § 478.124a(b) (2014).

[84] Brief of Petitioner at 34, *Abramski*, 134 S. Ct. 2259 (No. 12-1493) (emphasis added) (quoting 18 U.S.C. § 924(d)(1)).

[85] That a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous," Corley v. United States, 129 S. Ct. 1558, 1566 (2009) (quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004)), is "one of the most basic interpretive canons," *id.*

[86] 27 C.F.R. § 478.124(c)(1) requires "the transferee's name, sex, residence address, . . . date and place of birth; height, weight and race; . . . citizenship; . . . alien number[;] . . . [and] State of residence."

[87] *Abramski*, 134 S. Ct. at 2282 (Scalia, J., dissenting).

[88] *See, e.g.*, Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33, 45–47 (2008) (reading provision at issue in context of other Bankruptcy Code provisions).

[89] *Compare* 18 U.S.C. § 922(a)(6), *with id.* § 924(a)(1)(A).

[90] *See* Reply Brief at 21, *Abramski*, 134 S. Ct. 2259 (No. 12-1493).

[91] *Cf. Abramski*, 134 S. Ct. at 2282 (Scalia, J., dissenting) ("On the majority's view, if the bureaucrats responsible for creating Form 4473 decided to ask about the buyer's favorite color, a false response would be a federal crime.").

[92] *See id.* at 2266–67 (majority opinion).

Abramski, by putting his own information rather than Alvarez's on the form, did make a false statement with respect to information that the Act requires. So too will any future straw purchaser who does the paperwork in his own name. However, the government did not charge Abramski with making a false statement about the name of the purchaser; it charged him only with falsely stating he was the actual purchaser by answering "yes" to Question 11.a.[93] Dismissing the § 924(a)(1)(A) charge against Abramski would not, therefore, have impaired the statutory scheme — the government need only charge future straw purchasers with making a false statement about the identity of the actual buyer. Finally, because neither the text, the broader context of the Gun Control Act, nor the statutory purpose resolve the ambiguity in § 924(a)(1)(A), the fundamental, "liberty-protecting"[94] rule of lenity should act as a tiebreaker in favor of the defendant.[95]

Though affirming Abramski's § 922(a)(6) conviction while reversing his § 924(a)(1)(A) conviction would have had no practical impact for him, as his sentences ran concurrently, the precedential impact may be quite significant. The majority's interpretation of the ambiguous term "buyer" as relevant to § 922(a)(6) was faithful to the statutory scheme enacted by Congress; however, its interpretation of the ambiguous § 924(a)(1)(A) allows criminal behavior to be defined not by Congress or the Attorney General, but by whoever in the ATF designs Form 4473.[96] If the rule of lenity does not tip the balance in favor of the defendant there, it is hard to see where it ever would.[97]

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[93] *Id.* at 2274.

[94] *Id.* at 2281 (Scalia, J., dissenting).

[95] *See, e.g.*, *id.* ("[W]hen a criminal statute has two possible readings, we do not 'choose the harsher alternative . . . .'" (quoting United States v. Bass, 404 U.S. 336, 347 (1971))); Maracich v. Spears, 133 S. Ct. 2191, 2222 (2013) (Ginsburg, J., dissenting) ("[T]he rule of lenity requires that we resolve any residual ambiguity in [a defendant's] favor."). Granted, there is some disagreement about the point at which the rule of lenity should apply. *Compare* Zachary Price, *The Rule of Lenity as a Rule of Structure*, 72 FORDHAM L. REV. 885, 891–93 (2004) (describing Justice Scalia's use of lenity as kicking in immediately after textual ambiguity, so as to foreclose other tools of interpretation), *with* Note, *The New Rule of Lenity*, 119 HARV. L. REV. 2420, 2421 (2006) (describing the Rehnquist Court's use of lenity to protect innocent conduct). But given that the Act's text, statutory scheme, and purpose do not provide clear answers, even the least generous application of the rule of lenity would likely work to Abramski's advantage.

[96] *Cf.* Crandon v. United States, 494 U.S. 152, 178 (1990) (Scalia, J., concurring in the judgment) (explaining that executive branch interpretation of criminal statutes is due no deference because granting such deference would "replac[e] the doctrine of lenity with a doctrine of severity").

[97] *Cf. Abramski*, 134 S. Ct. at 2281 (Scalia, J., dissenting) ("If lenity has no role to play in a clear case such as this one, we ought to stop pretending it is a genuine part of our jurisprudence.").