



GUN OWNERS OF AMERICA

THE ONLY NO-COMPROMISE GUN LOBBY IN WASHINGTON

RE: Firearms Transactions and Straw Purchases



ADDRESSED TO

Office of Regulatory Affairs

Bureau of Alcohol, Tobacco, Firearms and Explosives

U.S. Department of Justice

Washington, DC 20226

SUBMITTED BY

Gun Owners of America
Gun Owners Foundation

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GOA & GOF COMMENTS TO ATF ON THE “STRAW PURCHASES” NPRM

GOA FEDERAL AFFAIRS | FORMAL COMMENTS ON RIN 1140-AA78 · 91 FED. REG. 24448 (MAY 6, 2026)

Re: Firearms Transactions and Straw Purchases (RIN 1140-AA78)

DOJ RULEMAKING

On May 6, 2026, the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) published a notice of proposed rulemaking to “provide clarity for conduct prohibited by federal law commonly referred to as a straw purchase.” 91 Fed. Reg. 24448, 24448 (May 6, 2026) (“NPRM”).¹ Under the Bipartisan Safer Communities Act of 2022 (“BSCA”), a criminal “straw purchase” is a purchase of a firearm on behalf of another person while “knowing or having reasonable cause to believe that such other person” is legally ineligible to purchase or possess firearms under federal law, or will use said firearm for a criminal purpose. 18 U.S.C. § 932(b).

The NPRM proposes to codify not only the BSCA’s narrow definition of “straw purchase,” but also ATF’s pre-BSCA “straw purchase doctrine” that broadly criminalized *all* firearm purchases on behalf of another person, subject only to certain narrow, limited, ATF-recognized exceptions. See NPRM at 24450, 24453. These exceptions include, *inter alia*, bona fide gifts and purchases by a parent or guardian for their minor child. See *id.* at 24453. In addition, and in response to recent “inquiries regarding ... the purchase of firearms as marital property,” the NPRM further exempts from its “straw purchase” prohibition purchases by one spouse on behalf of the other spouse, provided that both spouses are eligible to possess firearms and live at the same address. *Id.* at 24450, 24453.

The NPRM seeks public comment by August 4, 2026 on “the clarity of this proposed rule and how it may be made easier to understand,” as well as “the costs or benefits of the proposed rule and on the appropriate methodology and data for calculating those costs and benefits.” *Id.* at 24452.

IDENTITY OF COMMENTERS

Gun Owners of America, Inc. (“GOA”) is a California non-stock corporation headquartered in Springfield, Virginia. Organized as a nonprofit membership organization under Section 501(c)(4) of the Internal Revenue Code, GOA was founded in 1976 with the mission to preserve, protect, and defend the Second Amendment rights of gun owners. Today, GOA represents the interests of more than two million members and supporters nationwide, and routinely lobbies and litigates to vindicate the right to keep and bear arms throughout the country.

Gun Owners Foundation (“GOF”) is a Virginia non-stock corporation headquartered in Springfield, Virginia. GOF is a nonprofit legal defense and educational foundation exempt from federal income tax

1. See <https://www.govinfo.gov/content/pkg/FR-2026-05-06/pdf/2026-08922.pdf>.

under Section 501(c)(3) of the Internal Revenue Code. Supported by a national donor base, GOF provides essential legal services and educational resources to the firearms community. Its activities include strategic litigation and administrative advocacy, including the submission of comments such as these intended to safeguard the enumerated right of the people to keep and bear arms.

GOA and GOF have a direct interest in this rulemaking, which affects the rights of countless Americans, including GOA and GOF's members and supporters, to purchase or otherwise acquire firearms. For years, GOA and GOF have opposed ATF's atextual theory that the Gun Control Act's ("GCA") false-statement provisions criminalize the purchase of a firearm on another person's behalf. See 18 U.S.C. §§ 922(a)(6), 924(a)(1)(A). As GOA and GOF explained in an *amicus* brief filed in *Abramski v. United States*, 573 U.S. 169 (2014), the GCA's prohibitions on making false statements in connection with the acquisition of a firearm do not reach statements that are immaterial to the GCA's express requirements. See Brief *Amicus Curiae* of Congressman Steve Stockman et al., *Abramski v. United States*, No. 12-1493 (U.S. Dec. 3, 2013).² Thus, because the GCA does not require that a transferee of a firearm be its "actual buyer" – instead, only that the transferee be legally eligible to purchase and possess the firearm – GOA and GOF explained that the GCA does not allow a false-statement prosecution of a so-called "straw purchaser."³ See *id.* at 3. Although a narrow majority of the Court ultimately upheld ATF's theory in *Abramski*, the Court's textualist and originalist wing dissented, explaining that ATF's theory "punish[es] conduct that [the GCA's] plain language simply does not reach." *Abramski*, 573 U.S. at 194 (Scalia, Roberts, Thomas & Alito, JJ., dissenting).

GOA and GOF submit these comments to ensure that ATF's regulation complies with the statutory text and protects gun owners from future abuse.

SUMMARY OF COMMENTS

"As a dog returneth to his vomit, so a fool returneth to his folly." *Proverbs* 26:11 (King James). The NPRM is no exception. ATF's legal theories find no basis in the GCA, and in fact were rejected by Congress in the recently enacted BSCA. But rather than learn its lesson and promulgate an NPRM that comports with the laws Congress enacted, ATF seeks to expand the statute far beyond its text.

For years, ATF has taken the erroneous position that the GCA permitted a false-statement prosecution of a "straw purchaser" – a person who is not what ATF termed the "actual buyer" of a firearm. And for decades prior to adopting *that* erroneous position, ATF believed the GCA prohibited "straw purchases" only when the "actual buyer" was prohibited from purchasing or possessing firearms – an admittedly "narrower" view. NPRM at 24449. More recently, however, ATF has taken the "broader" position that an unlawful "straw purchase" takes place even when the "actual buyer" is "qualified to purchase a firearm...." *Id.*

But neither the "narrow" view nor the "broad[]" view comported with then-current federal law. In a word, prior to the BSCA, the GCA's plain terms *never* prohibited "straw purchases" and *never* required that a transferee be an "actual buyer" – terms that ATF invented out of whole cloth through regulatory

2. <https://www.lawandfreedom.com/site/firearms/Abramski%20Stockman%20amicus%20brief.pdf>.

3. Indeed, until passage of the BSCA, the term "straw purchase" did not appear in the GCA, but rather was an ATF construct.

fiat. Instead, the GCA looked only to whether “the *transferee*” who *received* the firearm from a dealer was eligible to do so.

In 2022, the BSCA changed things. With that bill, Congress for the first time criminalized “straw purchasing” by name, but in doing so “codified the narrower understanding” that ATF had once maintained. NPRM at 24449. Thus, under the BSCA, a person may not acquire a firearm on behalf of another person while “knowing or having reasonable cause to believe that such other person” is prohibited under federal law or will use said firearm for a criminal purpose. 18 U.S.C. § 932(b). In other words, straw purchasing is now illegal insofar as it occurs on behalf of a prohibited person or person who will commit a crime with it.

But rather than recognizing the BSCA as a *repudiation* of ATF’s “broader understanding” (NPRM at 24449), the NPRM doubles down on ATF’s atextual theory – proposing to codify both it *and* the BSCA’s narrow view. But that conflicts with the statutory text, the intent of Congress, and the Second Amendment. Rather than play the part of a “fool return[ing] to his folly,” ATF should have taken this opportunity to repudiate its atextual theories, and recognize that the BSCA’s new crime of “straw purchasing” is *the only one* that exists. ATF should withdraw this NPRM and return to the drawing board.

COMMENTS ON PROPOSED RULE

I. The NPRM Codifies a “Broad” Prohibition on Straw Purchasing that the GCA Never Supported and the BSCA Recently Rejected.

A. The NPRM’s Shaky Legal Foundations.

At the outset, Commenters reject the proposition that ATF has the authority even to require gun purchasers to certify whether they are the “actual buyer” of a firearm in the first place. Indeed, to the extent ATF was ever authorized to promulgate its Form 4473, that time has long passed.

In 1993, Congress passed the Brady Act to more directly enforce the GCA’s restrictions on “prohibited persons” via “instant” criminal background checks. To that end, Brady established a temporary, five-year transitional period to implement the National Instant Criminal Background Check System (“NICS”). During that period *before* NICS, a prospective buyer of a firearm was required to provide a written declaration that they were legally eligible to purchase it. During this transitional phase, Brady provided for a five-day waiting period to enable local law enforcement to verify the buyer’s information before a transfer would take place. See 18 U.S.C. § 922(s). ATF’s Form 4473 facilitated that temporary verification requirement.

But Brady also included 18 U.S.C. § 922(t), which established the specific procedures for firearm transfers *after* NICS became operational. Under Section 922(t), the *only* requirement placed on a potential firearm transferee is to produce the statutorily required identification verifying his identity. And once he does so, “the licensee contacts the national instant criminal background check system.” 18 U.S.C. § 922(t)(1)(A). Completely omitted from either requirement is a demand that the transferee declare in writing, on a government form, that he is eligible to possess a firearm. Instead, the issue of ineligibility is determined solely by the NICS system. Yet despite this statutory change, ATF has continued to require that dealers obtain a completed Form 4473 *before* allowing a NICS check to be run. It is this Form 4473 that continues to require a transferee’s certification that they are the “actual buyer” of a firearm which, in turn, has formed the basis of nearly all of ATF’s “straw purchase” prosecutions since then.

But Section 922(t) contained a specific start date, and made no mention of use of the Form 4473 after that date. Likewise, Section 922(s) – which temporarily permitted (arguably) the Form 4473 – had a specific end date. Thus, federal law does not currently authorize ATF’s continued use of the eligibility questions appearing on the Form 4473. In fact, Section 922(t) implicitly *prohibits* the Form 4473, undermining the very basis of this latest “straw purchasing” rulemaking.

B. Prior to the BSCA, the GCA Never Criminalized Straw Purchases.

The NPRM claims that its purpose is “to provide clarity” about the scope of straw purchase law. NPRM at 24448. Unfortunately, it seems that whenever ATF claims a rulemaking is being promulgated to provide “clarity,” that is code for ‘expanding the statute beyond what Congress allowed.’ See, e.g., *Texas v. BATFE*, 737 F. Supp. 3d 426, 442 (N.D. Tex. 2024) (ATF’s “engaged in the business” rule “flip[ped] the statute on its head”); *FRAC v. Garland*, 112 F.4th 507, 523 (8th Cir. 2024) (ATF’s “pistol brace” rule reduced a statutory definition to a “vague” factorial test). Unfortunately, this NPRM is no exception. While ATF for years has purported to criminalize the act of “straw purchasing” a firearm for another, even with

some courts going along with it, the concept of a “straw purchase” was found nowhere in the statute prior to 2022. Rather, it was an entirely made-up ATF construct.

First, the NPRM explains the GCA’s purpose is to “identify[] the *immediate transferee* of [a] firearm.” NPRM at 24449 (emphasis added). That is true – a dealer “shall not transfer a firearm to any other person who is not licensed under” the GCA without “verif[y]ing the identity of the *transferee* by examining a valid identification document” presented at the time of transfer. 18 U.S.C. § 922(t)(1)(D) (emphasis added). But the NPRM does not end its discussion with the “immediate transferee.” To the contrary, the NPRM goes on to discuss the “*true purchaser*” and “*ultimate recipient*” of a firearm, which the NPRM identifies as the “*actual purchaser*.” NPRM at 24450 (emphases added). But none of these terms is found in the statute. Rather, the GCA identifies *only the person* standing before the licensee – the “*transferee*,” not some other downstream recipient. ATF’s insertion of adjectives in front of statutory terms is clear evidence that it has *rewritten* the statute.

Second, Section 924(a)(1)(A) only prohibits false statements “with respect to the information required by this chapter....” But as explained *supra*, ATF’s Form 4473 is not *required* by any statute, and so a purchaser’s certification on that form that they are the “actual buyer” is not “required” either. See *id.*; cf. 18 U.S.C. §§ 922(s), (t). Again, Section 922(t) establishes the procedure for a licensed dealer’s transfer of a firearm: (i) they must identify the transferee, and (ii) they must run a background check. So, following the NICS go-live date in 1998, the Form 4473 is in fact implicitly *prohibited* by Section 922(t). ATF’s continued use of the form cannot support any false-statement prosecution under Section 924(a)(1)(A) today.

Nor does the Supreme Court’s decision in *Abramski* justify the NPRM. *Abramski* was wrong when it was decided,⁴ it is wrong today, and it is highly unlikely that the opinion would withstand revisitation by the Court. Nevertheless, the NPRM cites *Abramski* as supporting ATF’s “broader understanding of straw purchase.” NPRM at 24449. But the Supreme Court has no more power to expand a statute and create new crimes than does ATF. As Justice Scalia wrote for a four-Justice dissent, “the fact that the agency charged with enforcing the Act read it, over a period of roughly 25 years, not to apply to the type of conduct at issue here is powerful evidence that interpreting the Act in that way is natural and reasonable and does not make its requirements ‘meaningless.’” *Abramski*, 573 U.S. at 202-03 (Scalia, Roberts, Thomas & Alito, JJ., dissenting). ATF has no power to codify an erroneous interpretation of a statutory scheme that has since been abrogated by the BSCA.

C. The BSCA Rejected ATF’s “Broad” Theory in Favor of Congress’s “Narrower” Approach.

In stark contrast to ATF’s atextual “straw purchase doctrine” under the GCA (NPRM at 24450), the BSCA ultimately *did* enact an express prohibition on straw purchases in 2022. However, in contrast to ATF’s “*broader* understanding of straw purchasing” that criminalized transferees irrespective of a downstream recipient’s legal eligibility, the BSCA specifically “codified the *narrower* understanding of the straw purchase doctrine, *i.e.*, a purchase for a prohibited person or person falling into other categories identified by Congress....” *Id.* at 24450, 24449 (emphases added). In other words, Congress *rejected* ATF’s “broader” theory and enacted a prohibition reaching only straw purchases for certain persons. The NPRM’s adoption of both the “broad” and “narrow” understanding therefore violates the statute.

⁴ See Brief *Amicus Curiae* of Congressman Steve Stockman et al., *supra*.

A number of authorities confirm this understanding. First, “Congress is presumed to know existing law.” *United States v. Knight*, 580 F.3d 933, 940 (9th Cir. 2009). When Congress enacted the BSCA and codified ATF’s “narrow” view, it was fully aware of the Supreme Court’s *Abramski* decision and ATF’s “broad” false-statement theory. Even so, Congress declined to codify this “broad” interpretation when given the opportunity to do so. In fact, the NPRM *concedes* that “Congress codified the narrower understanding” (NPRM at 24449), not the broader one. Thus, “[t]he expression of one thing implies the exclusion of others....” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012). If Congress deliberately codified something *narrow*, ATF may not enact a regulation criminalizing something *broad*. The NPRM is statutory expansion, plain and simple.

Second, “it is fundamental in criminal law that where two statutory provisions cover the same subject matter, but one is general, and may apply to similar, but unrelated situations, and the other is specific and limited to the situation in question, the specific alone will control....” *United States v. Gross*, 159 F. Supp. 316, 318 (D. Nev. 1958); see also Scalia & Garner, *supra*, at 183 (“If there is a conflict between a general provision and a specific provision, the specific provision prevails....”). The BSCA specifically criminalizes “straw purchasing,” and it does so in the specific context of purchases on behalf of certain persons. 18 U.S.C. § 932. This subsequent enactment takes precedence over any prior interpretation of the GCA’s false-statement provisions that could have reached straw purchases. Indeed, as the BSCA’s proponents explained, the pre-BSCA interpretation involved ineffectual “‘paperwork violations’ that prohibit[ed] making false statements,”⁵ not actual straw purchases. But “now,” under the BSCA, “the DOJ has a way to ... prosecute individuals who engage in firearms trafficking.”⁶ Because “[s]tatutes *in pari materia* are to be interpreted together, as though they were one law,” Scalia & Garner, *supra*, at 252, Section 932 must prohibit “straw purchasing,” while Sections 922(a)(6) and 924(a)(1)(A) must be understood to prohibit something *other than* “straw purchasing.”

Third, if ATF’s “broader” version of the statute were correct – that the GCA prohibits *all* purchases of a firearm for or on behalf of another person – then ATF would have no authority to narrow the statute by declaring exceptions through regulation. Indeed, if ATF’s “broad” interpretation were the law, there would be no allowance for “bona fide gifts” or for parent-child purchases. Nor would ATF’s newest spouse-spouse purchases be allowed. The NPRM fails to articulate any justification for allowing a spouse-spouse transfer, but not the nephew-uncle transfer at issue in *Abramski*. Nor does the NPRM articulate why spouses must live at the same address (NPRM at 24453) – indeed, marital property is marital property regardless of where the spouses reside. And if residence were the issue, then why not permit nephew-uncle purchases if both parties are eligible to possess and live at the same address? At bottom, if ATF’s “broad” view were correct, then *no* exceptions would be allowed – certainly, none is found in the statutes at issue. The fact that ATF has decided to create a series of regulatory exceptions out of whole cloth constitutes an admission that ATF made up the crime of “straw purchase” in the first place. Only the BSCA’s crime of “straw purchasing” exists – nothing more.

5. https://www.collins.senate.gov/imo/media/doc/senator_collins_statement_on_gun_safety_bill.pdf at 2.

6. <https://www.cornyn.senate.gov/news/cornyn-op-ed-four-years-later-the-bipartisan-safer-communities-act-is-making-a-difference/>.

II. The NPRM Fails to Consider Whether Its General Prohibition on All Firearm Purchases on Behalf of Other Persons Comports with the Second Amendment.

The Second Amendment provides that “the right of the people to keep and bear Arms, shall not be infringed.” That right necessarily includes the right to purchase and acquire firearms. See *Reese v. BATFE*, 127 F.4th 583, 590 (5th Cir. 2025) (“the right to ‘keep and bear arms’ surely implies the right to purchase them”); *Ortega v. Grisham*, 148 F.4th 1134, 1143 (10th Cir. 2025) (“the right to bear arms requires a right to acquire arms”); see also *Wilson v. Jackson County*, 2026 U.S. Dist. LEXIS 140272, at *8 (W.D. Mo. June 24, 2026) (“if the Government cannot directly prohibit possession of a firearm, it cannot do so indirectly by making it unlawful to purchase or acquire a firearm”). Thus, if a firearm regulation “place[s] any restrictions” on that right, it is “presumptively unconstitutional,” *Wolford v. Lopez*, 225 L. Ed. 2d 494, 506 (2026), and “the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022).

Contrary to the Second Amendment’s plain text and the Supreme Court’s instruction that the government justify its firearm regulations via historical tradition, the NPRM broadly prohibits any person from purchasing a firearm on any other person’s behalf, subject only to limited exceptions. See NPRM at 24453. The NPRM proposes to promulgate this restriction without *any* reference to the Second Amendment whatsoever, much less any analysis of Founding-era regulations governing the acquisition of arms. See *Bruen*, 597 U.S. at 37 (“generally assum[ing] that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791”). Indeed, even if there were a historical tradition of disarming certain classes of *prohibited persons*, that would not permit ATF’s attempt to prohibit one eligible person from acquiring a firearm for *another eligible person*.

Should ATF “entirely fail[] to consider an important aspect of the problem,” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) – here, whether the NPRM’s broad criminalization of presumptively protected conduct comports with the Second Amendment – any final rule ATF promulgates definitionally will be “arbitrary and capricious.” 5 U.S.C. § 706(2)(A); *State Farm*, 463 U.S. at 43. And, certainly, any rule promulgated in violation of federal constitutional rights cannot stand. 5 U.S.C. § 706(2)(B).

CONCLUSION

The NPRM expands the federal prohibition on “straw purchasing” far beyond what the GCA ever allowed, defies the limitations Congress expressly imposed on straw purchases in the BSCA, and runs headlong into the Second Amendment’s “unqualified command.” *Bruen*, 597 U.S. at 17. ATF must withdraw the NPRM and return to the drawing board.

Respectfully submitted,



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GUN OWNERS OF AMERICA