

No. 1-23-1908

In the
Appellate Court of Illinois
First Judicial District

CITY OF CHICAGO,

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Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

Plaintiff-Appellant,

v.

WESTFORTH SPORTS, INC.,

Defendant-Appellee.

Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 2021CH01987
The Honorable **Clare J. Quish**, Judge Presiding.

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF
**GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, BRADY CENTER TO
PREVENT GUN VIOLENCE, MAYOR AND CITY COUNCIL OF BALTIMORE, CITY
OF SAN JOSE, AND CITY OF KANSAS CITY**
IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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Prevent Gun Violence, Mayor and City Council of Baltimore, City of San Jose, and City of
Kansas City*

Pursuant to Illinois Supreme Court Rule 345, proposed *amici curiae*, Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”), Brady Center to Prevent Gun Violence (“Brady”), Mayor and City Council of Baltimore (“Baltimore City”), City of San Jose, and City of Kansas City (“Kansas City”) (collectively “*Amici*”), respectfully seek leave to file an *amici curiae* brief in support of the appeal of the Circuit Court’s ruling to dismiss Appellant-Petitioner’s Complaint.

MEMORANDUM OF LAW

A decision to permit the filing of an *amicus* brief is discretionary, left to the court’s judicial grace. Ill. Sup. Ct., R 345. The Illinois Supreme Court has held that permission to file an *amicus* brief should be granted where the brief will provide the court with “ideas, arguments, or insights helpful to the resolution of the case that were not addressed by the litigants themselves.” *Kinkel v. Cingular Wireless, L.L.C.*, No. 100925, 2006 Ill. LEXIS 1 *2 (Jan. 11, 2006). When assessing the appropriateness of *amicus* briefs, the Illinois Supreme Court has considered whether *amici* can offer information or some unique perspective beyond that of counsel to the parties. *Id.* at *3.

The focus of this case is gun violence prevention, and *Amici* share that focus. Both Brady and Giffords Law Center specialize in the prevention and analysis of gun violence in America. Brady is the nation’s oldest nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research, and legal advocacy. Giffords Law Center is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who look to reduce gun violence and improve the safety of their communities. Baltimore City, the City of San Jose, and Kansas City are municipalities, like Chicago, who experience firsthand the public safety concerns attributed to the illegal straw sales of firearms.

Amici's extensive knowledge on the issue will allow them to bring context to the potential impact of this Court's ruling. *Amici* respectfully submit this brief to provide a unique insight for the resolution of the matter at hand. A copy of a proposed order is attached hereto as Exhibit A. A copy of *Amici's* proposed *amicus* brief is attached as Exhibit B.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that the Court grant them leave to participate as *amici curiae* and accept for filing the proposed *amicus* brief attached to this motion.

Dated: March 1, 2024

Respectfully submitted,

Giffords Law Center To Prevent Gun
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Kansas City***

NOTICE OF FILING and PROOF OF SERVICE

In the Appellate Court of Illinois
First Judicial District

CITY OF CHICAGO,)	
)	
<i>Plaintiff-Appellant,</i>)	
v.)	No. 1-23-1908
)	
WESTFORTH SPORTS, INC.,)	
)	
<i>Defendant-Appellee.</i>)	
)	
)	

The undersigned, being first duly sworn, deposes and states that on the 1st day of March 2024, there was electronically filed and served upon the Clerk of the above court the Motion for Leave to File *Amicus Curiae* Brief of Giffords Law Center to Prevent Gun Violence, Brady Center to Prevent Gun Violence, Mayor and City Council of Baltimore, City of San Jose, and City of Kansas City in Support of Plaintiff-Appellant and Reversal, and through the Odyssey eFile Illinois system, served on the following counsel of record:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Edward C. Young
Edward C. Young

EXHIBIT A

EXHIBIT B

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IDENTITY AND INTEREST OF AMICI CURIAE

Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities. Giffords Law Center researches, drafts, and defends laws, policies, and programs proven to effectively reduce gun violence. Its attorneys track and analyze firearm legislation, evaluate policy proposals regarding gun violence prevention, and participate in litigation nationwide. The organization has provided courts with *amicus* assistance in many important cases involving guns and gun violence.

Brady Center to Prevent Gun Violence (“Brady”) is the nation’s longest-standing non-partisan, non-profit organization dedicated to reducing gun violence through education, research, and legal advocacy. Brady works across Congress, courts, and communities, uniting gun owners and non-gun-owners alike, to take action to prevent gun violence. Brady has a substantial interest in ensuring that the Constitution is construed to protect Americans’ fundamental right to live. Brady has filed numerous briefs as *amicus curiae* in cases that implicate gun violence prevention.

Mayor and City Council of Baltimore (“Baltimore City”) is a municipal corporation. Its government and officials bear the responsibility of protecting the health, welfare, and safety of the over 576,000 residents. As with many urban areas, it contends with significant gun violence. While Baltimore City saw a historic drop in homicides and gun crimes in 2023, approximately 210 people still lost their lives to gun violence last year, and shootings involving juveniles are on the rise. Baltimore City has no firearm retailers within its borders; thus, as with the case at bar, the flow of guns into the city can be attributed to outside sources. While the Bureau of Alcohol, Tobacco, Firearms and Explosives does not share all current gun tracing data, because of Maryland's own strict gun violence prevention laws, it is estimated that 60 to 70 percent of guns

used in crimes in Baltimore City came from vendors outside of the state. Baltimore City therefore has a significant interest in pursuing bad actors who engage in unlawful straw sales that lead to firearm crimes on its streets, whether those sales occur in Maryland or in other states.

The City of San Jose supports the City of Chicago's position that Appellee's intentional dealing of firearms to known straw purchasers critically endangers the wellbeing of Chicagoans and forces the City to squander resources in response. Chicago is not exceptional, but one exemplary community affected by this common circumvention of firearm laws. The City of San Jose has laws that require the licensing of retail firearms sales, leases, and transfers. *See* San Jose Municipal Code Chapter 6.90. The State of California also has an extensive set of regulations regarding the sale, lease, or transfer of firearms. *See* California Penal Code Sections 26500 *et seq.*

Straw purchasing is a common method of obtaining guns illegally. In recognition of the dangers posed to public safety when straw purchases occur, Congress recently incorporated the term "straw purchase" into the U.S. Code, along with additional offenses related to straw purchasing. *See* 18 U.S.C. §§ 932-934)); 18 U.S.C. § 924(a)(1)(A). The City of San Jose has a vital interest in the prevention of straw purchasing of firearms because, as noted in the City of Chicago's brief, illegal gun sales through straw purchasers cause harm to public safety since they are used to commit crimes and contribute to gun violence.

City of Kansas City, Missouri ("Kansas City") is a municipal corporation and charter city in the State of Missouri, comprised of over 500,000 residents spread over four counties. Kansas City is one of the major hubs of gun violence located in a state with "appallingly weak gun laws and one of the country's highest gun death rates."¹ At least 933 shootings have occurred in Kansas

¹ "Missouri Gun Laws," Giffords Law Center to Prevent Gun Violence, *available at* <https://giffords.org/lawcenter/gun-laws/states/missouri/>.

City between 2019 and 2022, yielding 588 deaths and 668 people injured.² Kansas City had an all-time high gun murder rate in 2023, with 170 homicides resulting from gun violence.³ These gun deaths can largely be traced to the state’s “appallingly weak gun laws.” For example, when Missouri repealed its permit to purchase law in 2007, firearm homicide rates increased by 30% in Jackson County, the most populous of the Kansas City counties, and resulted in increases of between 55 and 63 firearm homicide rates per year in Missouri.⁴ Despite the significant gun violence in Kansas City, it lacks virtually any regulatory power over gun sales, as the state “occupies and preempts the entire field of legislation touching in any way firearms, components, ammunition and supplies to the complete exclusion of any order, ordinance or regulation by” Kansas City.⁵ This has forced Kansas City to seek additional ways to force federal firearms licensees to comply with existing laws, including the laws on straw purchasing. For example, in 2020, with the help of Everytown for Gun Safety, Kansas City filed suit against a gun manufacturer, gun shops, and several individuals for running a straw purchase/trafficking ring that affected the City.⁶ Kansas City, therefore, has a significant interest in pursuing bad actors who engage in unlawful straw sales that lead to gun crimes on its streets and against its citizens.

Pursuant to Illinois Supreme Court Rule 345, Giffords Law Center, Brady, Baltimore City, the City of San Jose, and the Kansas City (hereinafter “*Amici*”) file this brief to highlight that the Court’s resolution of this challenge may have the effect of protecting firearms dealers who knowingly engage in straw sales from being held accountable for their unlawful actions. *Amici*

² D. Nass, “An Atlas of American Gun Violence,” The Trace (updated Feb. 1, 2023), *available at* <https://www.thetrace.org/2023/02/gun-violence-map-america-shootings/?place=Kansas-City-Missouri>.

³ “Daily Homicide Analysis December 31, 2023,” Kansas City, Mo. Police Dep’t (data as of Jan. 5, 2024), *available at* <https://www.kcpd.org/media/5316/final-daily-homicide-analysis-23.pdf>.

⁴ Webster et al. “Effects of the Repeal of Missouri’s Handgun Purchaser Licensing Law on Homicides,” J. Urban Health (2014), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3978146/>.

⁵ Mo. Rev. Stat. § 21.750.1.

⁶ *City of Kansas City, Missouri v. Jimenez Arms, et al.*, Case No. 2016-CV00829 (Jackson Cnty., Mo.)

support the City of Chicago’s position that appellee’s intentional dealing of firearms to known straw purchasers critically endangers the wellbeing of Chicagoans and forces the City to squander resources in response. Chicago is not exceptional, but one exemplar community affected by this common circumvention of firearm laws. This brief is submitted to offer *Amici*’s expert perspective on the issue of gun violence, to illuminate the issue’s interdependence with the illegal straw purchasing of firearms, and to pray the Court provide the City of Chicago relief.

INTRODUCTION

Gun violence in the United States is an epidemic touching communities nationwide. In 2023, there were nearly 20,000 deaths and 40,000 injuries related to gun violence across the United States.⁷ One cause of this epidemic is the wide availability of firearms to individuals who should not have them. Despite numerous gun regulations, criminals remain able to access guns relatively easily through illicit channels such as straw purchasing. In a straw purchase, one “person . . . buys a gun on someone else’s behalf while falsely claiming that it is for himself.” *Abramski v. United States*, 573 U.S. 169, 171–72 (2014). The true recipients are often individuals prohibited from possessing firearms and therefore would not be able to legally purchase a gun themselves.⁸

Straw purchasing is a common method of obtaining guns illegally. In recognition of the dangers posed to public safety when straw purchases occur, Congress recently incorporated the term “straw purchase” into the U.S. Code, along with additional offenses related to straw purchasing. *See* 18 U.S.C. §§ 924(a)(1)(A), 932–934)). The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) traces guns used in the commission of crimes to their original

⁷ Gun Violence Archive, *available at* <https://www.gunviolencearchive.org/>.

⁸ “Whether the actual buyer is prohibited or not is irrelevant as explained in *Abramski v. United States*, 573 U.S. 169 (2014).” FFL Newsletter, U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (June 2021), *available at* <https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensee-ffl-newsletter-june-2021/download> (distributed to federal firearms licensees in 2021).

source. ATF data collected in 2021 indicated that nearly **60 percent** of guns recovered from crimes were likely obtained via straw purchasing because they were purchased at a licensed firearm dealer by someone who was not the ultimate possessor of the gun.⁹ Limiting the accessibility of guns for those who should not have them, therefore, requires stopping straw sales at the point of sale.

The onus is primarily on the federally licensed firearm dealer to spot and stop the illegal sale at its inception. The Gun Control Act of 1968 “establishes a detailed scheme to enable the [licensed firearm] dealer to verify, at the point of sale, whether a potential buyer may lawfully own a gun.” *Abramski*, 573 U.S. at 172). Responsible licensed dealers train their employees to spot illegal sales—including straw sales—in progress. Dealers can be held accountable both civilly and criminally if they deliberately ignore red flags that a straw purchase is occurring.¹⁰ The data shows that a majority of dealers comply with their legal obligations. Only a small portion of federally licensed dealers turn a blind eye to straw purchasing and gun trafficking, choosing to look the other way when confronted with red flags demonstrating that straw purchases are occurring. It is those dealers who are largely responsible for the high incidence of straw-purchased and criminally trafficked firearms. And it is those dealers who must be held accountable for the consequences of their illegal sales—consequences that are wreaking havoc on American communities.

Defendant Westforth Sports is one such dealer. Westforth has repeatedly looked the other way when facing an illegal sale. Dealers like Westforth do not unknowingly participate in straw sales—their willful blindness constitutes knowledge.¹¹ Despite being sanctioned for facilitating illegal sales in the past, Westforth has continued to allow straw purchases to occur in its stores.

⁹ See National Firearms Commerce & Trafficking Assessment, Vol. II, Part III: Crime Guns Recovered and Traced Within the United States and its Territories (2023) (“NFCTA Part III”) at 26, *available at* <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us>

¹⁰ See, e.g., *U.S. v. Carney*, 387 F.3d 436 (6th Cir. 2004).

¹¹ See *Carney*, 387 F. 3d. at 448–50 & nn.8, 10.

Westforth's inaction has resulted in an influx of straw-purchased firearms into Chicago. Firearm dealers, like Westforth, reasonably should know that straw-purchased guns from their stores are likely to be used in crimes both in their own communities and in nearby states.¹²

The chancery court in this case believed that Westforth's actions were too attenuated from the resulting violent crimes in Chicago to attribute to it the knowledge needed to confer personal jurisdiction. *Amici* respectfully disagree. Like other federally licensed firearm dealers, Westforth knew, or reasonably should have known, of the crimes that would result from transparently illegal straw purchases made in Westforth's store, and thus should be held accountable for facilitating those crimes. Accordingly, Westforth has the requisite intent for purposes of conferring personal jurisdiction. Law enforcement, and the American public, rely on firearm dealers like Westforth to prevent sales and keep guns out of the hands of criminals and those who are not qualified to possess them. When firearm dealers fail to live up to their legal obligations and industry standards of care, they can and should be held responsible.

ARGUMENT

I. Straw Purchasing Is A Well-Known Method Of Distributing Firearms Illegally In The United States

Straw purchasing is a pervasive problem in this country—one that threatens to undermine laws designed to restrict the improper sale and distribution of guns. The Gun Control Act of 1968 forbids the sale of firearms to certain individuals who are not qualified to own a gun due to youth, previous convictions, place of residence, mental and emotional status, or other disqualifying condition. 18 U.S.C. § 922 (“GCA”). The two purposes of the GCA are to “keep guns out of the hands of criminals and others who should not have them, and to assist law enforcement authorities

¹² See, e.g., “Don’t Lie for the Other Guy” Program, available at <https://www.dontlie.org/> (training offered to federally licensed firearm dealers to detect and prevent straw purchasing).

in investigating serious crimes.” *Abramski*, 573 U.S. at 180. Those purposes would be undermined “if the statute turned a blind eye to straw purchases.” *Id.* Straw purchases are illegal because the actual purchaser, who is not the intended possessor, conceals the identity of the intended possessor, who likely would not have been qualified to own a gun. *See* 18 U.S.C. § 932(b); *id.* § 922(b)(5) and ATF Form 4473 (requiring the purchaser to identify any intended transferees); *see also* 18 U.S.C. § 922(c) (prohibiting federally licensed dealers from selling a firearm to a person who is not present with limited exceptions).

To prevent straw purchasing, the law relies on federal firearms licensees (“FFLs”) to detect and refuse to sell guns to straw purchasers. *See* Part IV, *infra*. Notably, however, straw-purchased firearms are most often purchased from FFLs.¹³ Thus, despite law enforcement efforts and gun laws, straw purchasers continue to funnel illegal firearms into cities across the United States. Guns procured through straw purchasing from FFLs that fail to act lawfully and responsibly to block straw sales are frequently used in the commission of crimes (“crime guns”). Law enforcement, firearms organizations, courts, and researchers have all recognized straw purchasing as prevalent in the United States and a significant contributor to our nation’s epidemic of criminal gun violence.

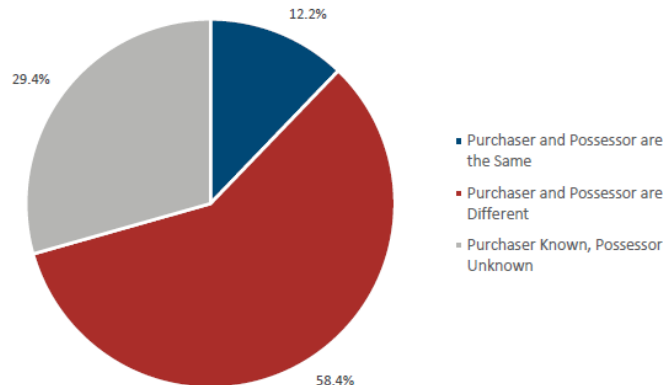
Gun tracing data provided by ATF reveals that a large portion of recovered crime guns resulted from straw purchasing and/or gun trafficking. For example, between 2017 and 2021, the ATF traced a total of 1,482,861 crime guns and found that 58 percent had a different purchaser than possessor and 29 percent had no known possessor.¹⁴ Only 12 percent of those crime guns

¹³ *See* NFCTA Part III at 7; *see also* City of Chicago – Office of the Mayor, “Tracing the Guns: The Impact of Illegal Guns on Violence in Chicago” (May 27, 2014), *available at* <https://www.chicagobusiness.com/Assets/downloads/20151102-tracing-guns.pdf> (“City of Chicago”) at 4; Cook, et al., “Some Sources of Crime Guns In Chicago: Dirty Dealers, Straw Purchasers, and Traffickers,” 104 J. Crim. L. & Criminology 717, 726 (2015) (“Cook”), *available at* <https://scholarlycommons.law.northwestern.edu/jclc/vol104/iss4/2/>.

¹⁴ NFCTA Part III at 26.

were recovered in the possession of the same person that had purchased them.¹⁵ The fact that the original purchaser and ultimate possessor are usually different shows the dominance of straw purchasing in sales of firearms that are ultimately used to commit crimes, as shown below¹⁶:

Figure IFT-05: Percentage of Traced Crime Guns by Purchaser and Possessor Relationships, 2017 – 2021



Importantly, when tracing these crime guns back to the original retailer, most of these guns were acquired in recorded, licensed sales made by FFLs, purportedly in compliance with federal and state regulations.¹⁷ Based on this data, the ATF has concluded that law enforcement must address straw purchasing to decrease the volume of illegally obtained guns that are used in crimes.¹⁸

Indeed, the ATF recognized that straw-purchasing is the “linchpin of most firearms trafficking operations” and “a grave threat to public safety.”¹⁹ Courts similarly have acknowledged

¹⁵ *Id.*

¹⁶ NFCTA Part III at Fig. IFT-05.

¹⁷ *Id.* at 7, Table OFT-06.

¹⁸ See generally “Crime Gun Trace Analysis Report: The Illegal Youth Firearms Market in Chicago, IL,” Dep’t of the Treasury, Bureau of Alcohol, Tobacco & Firearms (1999) at 14 *available at* <https://www.atf.gov/file/57256/download>.

¹⁹ G. LeMee, et al., “Buying guns for criminals: Easy, illegal, and ‘extremely difficult’ to stop,” LA Times (Dec. 7, 2023), *available at* <https://www.latimes.com/california/story/2023-12-07/gun-dealers-story-2-straw-purchases>; see also “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers,” Dep’t of the Treasury, Bureau of Alcohol, Tobacco & Firearms (June 2000) at 18 (“Following the Gun”) (“[S]traw purchasers represent a significant overall crime and public safety problem.”), *available at* [google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiMoYGMicqEAXWBEGIA](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiMoYGMicqEAXWBEGIA)

the widespread nature of straw purchasing and the danger it poses to American communities. *See, e.g., Abramski*, 573 U.S. at 179–80); *U.S. v. Inglese*, 282 F.3d 528, 531–32 (7th Cir. 2002) (discussing the circumvention of state and federal firearms law via straw purchasing); *U.S. v. Rocha*, No. 19-CR-625, 2019 WL 4384465, *4, 8–9 (N.D. Ill. Sept. 11, 2019) (acknowledging “the public safety risk from” straw purchasing); *Gen. Agents Ins. Co. of Am. v. Midwest Sporting Goods Co.*, 328 Ill. App. 3d 482, 489–90 (Ill. App. 1st Dist. 2002) (noting the “known propensity to introduce the guns to the illegal secondary market”).

Although straw purchasing fuels gun violence in both rural and urban areas, the data makes clear that certain cities are particularly impacted by the influx of straw purchased firearms. Tracing data from cities such as Baltimore, San Jose, Boston, Philadelphia, and Chicago indicates that a large volume of firearms later used in crime are straw purchased.²⁰ Moreover, research conducted in New York City revealed that 94.9 percent of crime guns recovered by the NYPD were recovered from persons who were not listed as the original purchaser of the firearm.²¹

Surveys of participants in the underground gun markets in Chicago, Baltimore, and Boston reflected similar results.²² Data collected in these surveys supported ATF’s trace data in finding

[HqOnDf4QFnoECBkQAQ&url=https%3A%2F%2Fwww.hsdl.org%2F%3Fview%26did%3D1622&usg=AOvVaw2245exkL-RGt6vhVbTYu6-&opi=89978449](https://www.hsdl.org/?view%26did%3D1622&usg=AOvVaw2245exkL-RGt6vhVbTYu6-&opi=89978449).

²⁰ *See* NFCTA Part III at 39, Table GP-04a; *see also* Braga, et al., “Underground Gun Markets and the Flow of Illegal Guns into the Bronx and Brooklyn: A Mixed Methods Analysis” (2020) (“Braga”), 98 J. Urban Health (2020) at 596–606, *available at* <https://pubmed.ncbi.nlm.nih.gov/32888157/>; C. Crifasi, “Baltimore’s Underground Gun Market: Availability of and Access to Guns,” 7 Violence and Gender (2020) (“Crifasi”) at 78–82, *available at* <https://www.liebertpub.com/doi/10.1089/vio.2019.0054>; G. Thrush, et al., “6 Gun Shops, 11,000 ‘Crime Guns’: A Rare Peek at the Pipeline,” New York Times (June 2023) (“Thrush”), *available at* <https://www.nytimes.com/2022/04/28/us/politics/gun-shops-weapons-resell.html#:~:text=From%202014%20to%202020%2C%20six,gun%20control%20group%20Brady%2C%20the>.

²¹ *See* Braga at 604.

²² *See generally* Crifasi; Braga; Cook; D. Kennedy, et al., “Youth Violence in Boston: Gun Markets, Serious Youth Offenders, and a Use-Reduction Strategy,” Law & Contemporary Problems (1996) (“Kennedy”), *available at* <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4315&context=lcp>.

that a majority of crime guns are used by individuals who were not the registered purchaser of the firearms.²³ As in New York City, the data is complemented by survey respondents who confirm that straw purchasing is a well-known and common avenue by which guns are trafficked into these cities. In fact, some respondents to the surveys stated that they knew of, or were themselves, participants in straw-purchasing, and knew which FFLs would allow illegal straw purchases.²⁴

The research from these representative cities reflects a nationwide problem: illegal straw purchasing of firearms to circumvent local and federal regulations and to supply criminal actors. Although the prevalence of straw purchasing is well documented across the country, local law enforcement face difficulties in stopping those purchases at the source and prosecuting those responsible. As such, it becomes essential for FFLs to identify straw purchasers and refuse to facilitate these illegal sales, thus minimizing the volume of crime guns available. The inability or unwillingness of some FFLs to fulfill this responsibility poses a direct threat to public safety.

II. Straw-Purchasers Rely On Interstate Trafficking To Funnel Guns Into Areas With Stricter Firearm Regulations

Straw purchasers frequently travel across state lines to either purchase or distribute a purchased firearm. Because gun regulations vary from state-to-state, some states have more stringent requirements to purchase a firearm while other states' regulations are more relaxed. There are also discrepancies among different states in how closely they police FFLs for failing to detect and prevent straw purchases. Straw purchasers take advantage of these discrepancies to more easily purchase firearms in one state and resell them in another where firearms are not as accessible to them. As explained above, straw-purchased guns purchased from FFLs account for a

²³ See NFCTA Part III at 26.

²⁴ See Braga at 605; Cook et al., "Sources of guns to dangerous people: What we learn by asking them," 79 Preventive Medicine 28, 31 (2015), *available at* <https://www.sciencedirect.com/science/article/abs/pii/S0091743515001486?via%3Dihub>.

majority of recovered crime guns. FFLs who are complicit in straw purchases frequently facilitate the use of those guns both in their own communities and in nearby states where the firearms may ultimately be trafficked.

The prevalence of interstate gun trafficking from states with more relaxed gun violence prevention regulations to those with stricter laws is reflected in ATF gun trace data. At the state level, the data collected in 2021 shows that New Jersey had the highest percentage of recovered crime guns traced back to out-of-state FFLs at 82 percent, followed by New York, Massachusetts, Hawaii, and Maryland.²⁵ These states all have stringent gun regulations, making it harder for an individual to purchase a firearm there, and making it more attractive to travel to another state to make a purchase.²⁶ As an example, in New Jersey, buyers have to abide by certain waiting periods between purchases and certain buyers must attend a training course before purchasing a gun.²⁷ In contrast, neither of these requirements exist in nearby Pennsylvania, thus making it a more alluring locale for a straw purchaser who may not want to wait between purchases or attend a mandated training course.²⁸

Similar incidence of interstate gun trafficking can be seen at the city level. Interstate gun trafficking accounted for a large portion of recovered crime guns in New York City (at 92.7 percent), Baltimore, Chicago, Los Angeles, and San Jose²⁹—all cities within states that have

²⁵ NFCTA Part III at 39.

²⁶ See “Universal Background Checks,” Giffords Law Center to Prevent Gun Violence, *available at* <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/universal-background-checks/>; see also “Licensing,” Giffords Law Center, *available at* <https://giffords.org/lawcenter/gun-laws/policy-areas/owner-responsibilities/licensing/>; Justia, *Gun Laws 50-State Survey*, *available at* <https://www.justia.com/constitutional-law/gun-laws-50-state-survey/>.

²⁷ See “Compare State Gun Laws,” Everytown 2023 Gun Law Rankings, Everytown Research & Policy, *available at* <https://everytownresearch.org/rankings/compare/?states=NJ%2CPA> (comparing New Jersey and Pennsylvania).

²⁸ See *id.*; see also Braga at 606 (identifying Pennsylvania as a common state where guns are purchased and trafficked into other states).

²⁹ NFCTA Part III at 39.

relatively strict gun regulations. Studies in New York City, which has some of the strictest gun regulations in the country,³⁰ confirmed that purchasers were traveling to states with more lax gun policies to make straw purchases and then illegally distributing those firearms in the city.³¹ “[A] flow of illegal guns from states with weaker gun controls circumvents [New York’s] laws and serves to arm some of the high-risk New York City residents, including convicted felons, juveniles, and others.”³²

Although not all interstate gun purchases can be traced to straw purchases, the ability to buy guns in a state with fewer regulations certainly opens the door for straw purchasing. And because most recovered crime guns can be attributed to straw purchasing (see Part I, *supra*) straw purchasers have evidently walked right through that door. Once again, the onus is on gun dealers, and especially FFLs, to prevent these illegal purchases. In the absence of consistent diligence among all FFLs, straw purchasers are continuing to illegally traffic firearms into states and cities with stricter gun regulations, thereby facilitating increased gun crime.

III. Crime Guns Recovered In Chicago Exemplify How Straw Purchasing And Interstate Gun Trafficking Fuels Gun Violence Across America

The city of Chicago, Illinois provides an appropriate case study to highlight how straw purchasers are used to funnel guns that are ultimately recovered at crime scenes into a city with stringent gun regulations. Straw purchasers are overwhelmingly relying on FFLs to sell them firearms that are then illegally distributed in the city. As the data in Chicago reveals, most of these FFLs reside outside of Illinois—where gun laws are more relaxed. Straw purchasers take advantage of the less stringent gun regulations in these neighboring states to purchase multiple

³⁰ Braga at 597.

³¹ *Id.* at 606 (emphasizing the number of guns purchased from FFLs in Pennsylvania and I-95 southern states).

³² Braga at 597.

firearms and funnel them into the city where those same firearms are used in crimes, to the detriment of the people of Chicago. FFLs in neighboring states, such as Indiana, are aware of the incidence of straw-purchased crime guns in Chicago and are responsible for identifying and preventing those sales.

a. The high incidence of straw-purchased firearms brought into Chicago is emblematic of the nationwide problem.

As Plaintiff in the underlying case, the City of Chicago emphasized that, “Chicago faces a gun violence crisis fueled by dealers who sell firearms to traffickers,” especially straw purchasers. *City of Chicago v. Westforth Sports, Inc.*, No. 2021-CH-01987, Compl. ¶ 7. Plaintiff’s assertion is well supported by the data. Chicago exemplifies the dangers associated with straw-purchased firearms that are illegally brought into, and used in crimes, in cities across the country.

Chicago suffers from some of the worst gun violence of any city in the United States.³³ In at least one study, Chicago was found to have the highest number of crime guns submitted for tracing of any major city.³⁴ Of crime guns recovered in Chicago between 2013 and 2017, the “vast majority” were recovered from possessors who were not the original purchasers.³⁵ As previously noted, ATF tracing and surveys of individuals residing in Chicago indicate that straw purchasing is a persistent issue within the city and results in firearms in the hands of those who are not qualified

³³ University of Cambridge, “U.S. gun violence: half of people from Chicago witness a shooting by age 40, study suggests,” available at <https://www.cam.ac.uk/research/news/us-gun-violence-half-of-people-from-chicago-witness-a-shooting-by-age-40-study-suggests>.

³⁴ See NFCTA Part III at 2 (Major cities were defined as having populations of 1,000,000 or more and Chicago had 50,312 traced crime guns, followed by Houston Los Angeles, Philadelphia and Dallas); see also City of Chicago at 1-2 (concluding more crime guns were recovered *per capita* in Chicago than in Los Angeles and New York combined).

³⁵ “Gun Trace Report,” City of Chicago, Office of the Mayor, Chicago Police Department (2017) (“Gun Trace Report”) at 8 (noting that in 95% of cases where the original purchaser of a crime gun could be identified, that individual was not the ultimate possessor of the firearm based on the retailer’s records), available at <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/October/GTR2017.pdf>.

to purchase guns themselves and/or who may intend to use them in violent crimes.³⁶ As in other cities, most crime guns recovered in Chicago can be traced back to FFLs as legally recorded purchases.³⁷

In Chicago, a major source of gun crime is gang violence.³⁸ Because gang members often have criminal histories, gangs frequently rely on illicit channels, such as straw purchasing, to arm themselves. In fact, “[s]traw purchases seem to be a more important source of crime guns to gangs compared to other types of dealer sales.”³⁹ And many of these straw-purchased firearms are used in the commission of crimes in the city.

There is no doubt that the rates of violent crime in Chicago are directly impacted by the incidence of straw purchasing.⁴⁰ Although Illinois and federal regulations aim to curb illegal purchasing of firearms, straw purchasing provides a consistent flow of illegal guns into the city. As a result, rates of violent crime in Chicago have not subsided.

b. Like many cities, guns are regularly trafficked into Chicago from other states, including Indiana.

Chicago is indicative of the nationwide trend of straw purchasing guns in states with more relaxed guns laws and funneling them into cities in neighboring states. Crime gun tracing data reveals that guns recovered in Chicago are frequently traced back to out-of-state FFLs from Indiana, Mississippi, and Wisconsin. These states all have less stringent gun regulations than Illinois and make it easier to buy a firearm.

³⁶ See Cook at 724; NFCTA Part III at 39.

³⁷ City of Chicago at 4.

³⁸ See Cook at 732 n.65.

³⁹ Cook at 724.

⁴⁰ Press Release, City of Chicago, Mayor Emanuel and Chicago Police Department Release Report Detailing Sources of Illegal Guns (May 27, 2014), *available at* https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2014/may/mayor-emanuel-and-chicago-police-department-release-report-detail.html.

According to Chicago’s Gun Trace Report in 2017, one in five crime guns recovered in Chicago was traced back to purchases made in Indiana.⁴¹ This is not a recent problem: earlier studies show the same level of interstate gun trafficking—accounting for approximately 60 percent of recovered crime guns—dating back to 2009.⁴² Along with Indiana, a substantial portion of crime guns recovered in Chicago were from Mississippi and Wisconsin.⁴³ Unlike Illinois, the states of Indiana, Mississippi, and Wisconsin do not require FFLs to check for gun related permits or licenses.⁴⁴ Additionally, Illinois requires waiting periods between gun purchases, while Indiana, Mississippi, and Wisconsin do not.⁴⁵ Waiting periods may be particularly burdensome to straw purchasers who need to continue buying and reselling firearms to make a profit. Thus, guns being funneled into Chicago are often purchased out-of-state. Moreover, the vast majority of *crime guns* within Chicago were bought by one person and distributed to another (i.e., straw purchased).

The influx of firearms into Chicago from straw-purchased, out-of-state sales has garnered “a fair amount of attention.” *Rocha*, 2019 WL 4384465, at *6; *see also, e.g., U.S. v. Ellis*, 622 F.3d 784, 788 (7th Cir. 2010) (describing straw purchases made in Indiana where the firearm was funneled into Chicago); *Rocha*, 2019 WL 4384465, at *1 (discussing straw purchasing of firearms in Wisconsin and bringing them into Illinois). Addressing this exact issue, the court in *Rocha* acknowledged that “the public safety risk from firearms dealt unlawfully . . . and then transported

⁴¹ See Gun Trace Report at 7; *see also id.* (“With consistent data trends now going back almost a decade, the majority of illegally used or possessed firearms recovered in Chicago are traced back to states with less regulation over firearms, such as Indiana and Mississippi.”).

⁴² City of Chicago at 4 (“Between 2009 and 2013, almost 60 percent of guns used to commit crimes in Chicago were first purchased outside of Illinois.”).

⁴³ *Id.* at 5; *see also* Cook at 725.

⁴⁴ See Justia, *Gun Laws 50-State Survey*, available at <https://www.justia.com/constitutional-law/gun-laws-50-state-survey/>.

⁴⁵ See Everytown Compare State Gun Laws, available at <https://everytownresearch.org/rankings/compare/> (comparing, Illinois, Indiana, Mississippi, and Wisconsin).

across state lines to unidentified purchasers is significant. Other courts have acknowledged this risk, and information the government proffered to the Court in this case demonstrates that concerns about this risk are rooted in fact.” *Id.*, at *4.

The commonality and danger of straw purchases made out-of-state and brought into Chicago was aptly summarized in the Chicago Tribune, as quoted in full in *Rocha*:

With no gun stores in Chicago and no background check loopholes for private sales, one thing is clear. The guns being used to kill people on Chicago’s streets aren’t originating in Chicago. They’re coming from someplace else Those with felony convictions commonly use straw purchases, in which they enlist someone with a clean record to purchase multiple guns and bring them into the city. Law enforcement officials say 60 percent of the guns confiscated on the streets of Chicago come from Indiana, Wisconsin, and Mississippi. . . . It’s tough, but we can try to sort out the bad apples in our own state and shut them down. But we’re helpless when it comes to regulating Indiana, Wisconsin, and Mississippi.

Id., at *9 (quoting Dahleen Glaton, *The truth – and lies – about Chicago’s gun laws*, Chicago Tribune, Oct. 3, 2017).

Lawmakers and law enforcement have tried to pass and enforce regulations to limit straw purchasing and interstate gun trafficking, but the data shows the rates of these illegal sales are not slowing down. To be clear, this trend of straw purchasing firearms in one state and funneling them into another is occurring in cities throughout this country, not only in Chicago. And FFLs, regardless of their location, must take steps to recognize and prevent these illegal sales before they happen. If not, as is seen in Chicago and numerous other cities across America, straw-purchased firearms will continue to be used to commit violent and dangerous crimes both within the communities where they are sold and in nearby states.

IV. FFLs Are Responsible For Detecting And Preventing Illegal Straw Purchasing And Interstate Gun Trafficking

As recognized by the ATF, “FFLs are often our first line of defense against gun crime and are often a source of critical enforcement information that helps law enforcement identify straw

purchasers and disrupt firearms trafficking schemes.”⁴⁶ Indeed, the Supreme Court has described FFLs as “principal agents” serving on the front lines “to prevent guns from falling into the wrong hands.” *Huddleston v. U.S.*, 415 U.S. 814, 824 (1974); *Abramski*, 573 U.S. at 172.

As such, FFLs are looked to and trained as a “first line of defense” against illegal sales, including straw purchases and interstate trafficking. Responsible gun sellers, following guidance from law enforcement including, but not limited to, the “Don’t Lie for the Other Guy” program (“Don’t Lie”)⁴⁷, train their employees on how to detect, stop, and report straw purchases. Unlike everyday Americans, FFLs are uniquely situated to identify straw purchasing at the source and recognize when their store is being targeted as a source of interstate gun trafficking. However, protocols to prevent straw purchasing only work when FFLs choose to carefully implement them and constantly supervise and retrain their employees to make sure these protocols are being applied.

a. FFLs are subject to licensing and regulatory requirements.

To legally sell firearms in the United States, a retailer must become licensed and meet several regulatory requirements. *See* 18 U.S.C. § 922 *et seq.* The FFL licensing process includes an electronic background check, an in-person interview, and a final review.⁴⁸ During the in-person interview, an Industry Operations Investigator discusses federal, state, and local requirements with the FFL applicant.⁴⁹ Through this process, FFLs become intimately familiar with the GCA and

⁴⁶ “ATF Posts Results of Federal Firearm Licensee Compliance Inspections Involving Violations of the Department of Justice’s Enhanced Regulatory Enforcement Policy,” Bureau of Alcohol, Tobacco & Firearms, <https://www.atf.gov/news/pr/atf-posts-results-federal-firearm-licensee-compliance-inspections-involving-violations#:~:text=FFLs%20are%20often%20our%20first,however%2C%20must%20be%20held%20accountable>.

⁴⁷ “Don’t Lie for the Other Guy” Program, available at <https://www.dontlie.org/>.

⁴⁸ Apply for a License, ATF, <https://www.atf.gov/firearms/apply-license>.

⁴⁹ *Id.*

gun sale requirements. And FFLs are designed, in part, to protect against illegal gun sales, including straw purchases.

The GCA “establishes a detailed scheme to enable the [FFL] dealer to verify, at the point of sale, whether a potential buyer may lawfully own a gun.” *Abramski*, 573 U.S. at 172. For example, under the GCA, FFLs may only sell guns to individuals of a certain age and are required to perform specified background checks. 18 U.S.C. §§ 922(b), (t); 27 C.F.R. § 478.102(a). Additionally, federal law requires that an FFL record all firearm transactions on ATF Form 4473. 18 U.S.C. §§ 922(b), (t); 27 C.F.R. § 478.102(a). That form establishes that the firearm purchaser is not disqualified from owning a gun due to a felony conviction or one of nine other conditions and requires that the purchaser list any intended transferee of the firearm.⁵⁰ As such, FFLs should be on notice of, and have a duty to report, suspected straw purchases or attempted illegal sales.

Once a gun retailer is officially licensed (i.e., becomes an FFL), continued compliance with the GCA and all other gun laws is required. 18 U.S.C. § 922 *et seq*). Many forms of post-licensing education are provided by the ATF, including open letters, information posted on the ATF’s official website, quarterly FFL newsletters, industry seminars, presence at industry tradeshows, and partnerships with industry associations.⁵¹ Additionally, intermittent inspections of FFLs are supposed to be performed by the ATF to ensure compliance with all regulations.⁵² During these routine inspections, ATF investigators provide additional instructional and educational materials about the requirements of the law, current regulations, and best practices.⁵³ Where violations are

⁵⁰ Cook at 726.

⁵¹ *Id.*

⁵² Importantly, the ATF is under-resourced and cannot perform more frequent inspections. As such, it is FFLs that are able to participate in straw sales to continue trafficking guns to the criminal marketplace in between these intermittent inspections.

⁵³ Cook at 726.

discovered, investigators assist retailers in implementing corrective actions.⁵⁴ The licensing requirements and compliance measures are in place to ensure FFLs remain a first line of defense against illegal sales.

b. FFLs have access to resources that would allow them to train their employees to detect straw purchasing and gun traffickers.

To ensure that FFLs are adept at detecting gun traffickers and straw purchasers, the ATF has partnered with the National Shooting Sports Foundation (“NSSF”) and the Department of Justice to form a national campaign designed to further educate and train firearm retailers in the detection and deterrence of straw purchases.⁵⁵ Toward that end, the ATF established “Don’t Lie” to limit prohibited persons from accessing guns by reducing straw purchases at the retail level.⁵⁶ Pursuant to this program, the ATF identified key cities—including Chicago—and then provided certain FFLs in those cities with free safety kits.⁵⁷ These kits contain educational materials, brochures, and point of sale displays intended to raise awareness and deter illegal straw purchases.⁵⁸ Don’t Lie establishes a baseline enforcement floor for the practices gun dealers should employ to help detect and block straw purchases. Responsible dealers can and should employ additional safeguards above and beyond those outlined in Don’t Lie, including those recommended in Brady’s gun industry code of conduct.⁵⁹

Don’t Lie is merely an example of trainings directed at detecting straw purchasing as states and organizations have proliferated similar training opportunities and literature.⁶⁰ These materials

⁵⁴ *Id.*

⁵⁵ Don’t Lie for the Other Guy, ATF, <https://www.atf.gov/firearms/dont-lie-other-guy>.

⁵⁶ Don’t Lie for the Other Guy, NSSF, <https://www.dontlie.org/faq.cfm>.

⁵⁷ *Id.* (The NSSF has distributed 95,000 safety kits).

⁵⁸ Don’t Lie for the Other Guy, NSSF, <https://www.dontlie.org/toolkit-request.cfm>.

⁵⁹ See <https://www.bradyunited.org/program/combating-crime-guns/gun-dealer-code-of-conduct>.

⁶⁰ See, e.g., 430 ILCS 68/1 §§ 5-30, 5-60 (mandating two hours of annual training for FFLs in Illinois, including training regarding indicators of straw purchasing).

describe indicators of a buyer’s behavior that should raise a red flag for the FFL, including but not limited to: purchasing multiple firearms, visiting the store frequently, acknowledging the firearm is for another person, being accompanied by multiple individuals, communicating with another regularly on the phone or via text, or expressing no lawful purpose for or general interest in the firearm being purchased.⁶¹ These trainings, tip sheets, and literature provide FFLs with a general understanding of straw purchasing, how to recognize it, and suggestions on what to do—refuse to make the sale and report the prospective buyer to law enforcement—when faced with indicators of straw purchasing.

c. FFLs who are compliant with reasonable policies and trainings can, and do, restrict illegal sales, but not all FFLs are compliant.

Between licensing requirements, gun regulations, and widespread trainings, FFLs are capable of detecting and mitigating illegal sales within their stores. Even so, data reveals that almost all recovered crime guns were initially sold by FFLs.⁶² In fact, from 2017 through 2021, approximately 70 percent of crime guns recovered were purchased from an FFL.⁶³ Of course, there are legal FFL sales after which the gun may be stolen or lost, but the remainder likely constitute illegal sales made by licensed dealers, including guns sold to obvious straw purchasers.

FFLs who adhere to responsible policies, for the most part, are not facilitating these illegal sales. Indeed, only a tiny percentage of FFLs account for over half of the firearms that end up in

⁶¹ See, e.g., “Tips For Preventing Firearm Straw Purchases”, Orchid Advisors (Nov. 19, 2021), available at <https://orchidadvisors.com/tips-for-preventing-firearm-straw-purchases/>; see also “Straw Purchase Prevention Program, Quick Referenced Guide,” FFL Consultants (2023), available at <https://www.ffaconsultants.com/wp-content/uploads/2023/11/FFLC-Straw-Purchase-Prevention-Training-Quick-Reference.pdf>; T. McHale, “Buying and Selling a Firearm: Straw Purchases,” NRA Blog (July 13, 2016), available at <https://www.nrablog.com/articles/2016/7/buying-and-selling-firearms-part-6-straw-purchases>.

⁶² See NFCTA Part III at 7; see also City of Chicago at 4; Cook at 726.

⁶³ NFCTA Part III at 7.

the hands of criminals by way of straw purchasing.⁶⁴ This is confirmed by state and federal studies indicating that a small number of FFLs in particular states are largely responsible for traced crime guns.⁶⁵ These findings parallel the data showing that “[a] small number of gun dealers are responsible for diverting guns to the criminal market. According to the last available data, just about 90% of crime guns were traced back to just 5% of licensed dealers.”⁶⁶

Similar studies have identified the relationship between FFL nonadherence to mandated policies and the number of illegal sales made. In Milwaukee, for example, one FFL sold more than half of the recovered crime guns in the area.⁶⁷ That FFL decided to change its own policies to curb its illegal sales, resulting in a 44 percent decrease of all newly trafficked crime guns in Milwaukee.⁶⁸ This drastic change highlights the strong effect that FFLs have on the number of illegal sales, including straw-purchased weapons and guns trafficked interstate.

⁶⁴ Glenn Thrush & Katie Benner, New York Times (June 2023) – 6 Guns Shops, 11,000 Crime Guns: A Rare Peek at the Pipeline; *see also* G. Wintemute, “Firearm Retailers’ Willingness to Participate in an Illegal Gun Purchase,” 87 J. Urban Health: Bulletin of N.Y. Academy of Med. 865, 866 (2010) (concluding some FFLs sell a disproportionate number of crime guns when compared to other FFLs in the area), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2937134/>; R. Stansfield, et al., “Licensed firearm dealers, legal compliance, and local homicide: A case study,” 22 Crim. & Pub. Policy (2023) (“Stansfield”) at 337 (“When legal guns are recovered by police at crime scenes, a majority are sold by a minority of high-volume gun dealers and brokers.”), *available at* <https://onlinelibrary.wiley.com/doi/full/10.1111/1745-9133.12621>; *see also* “Combating Crime Guns FAQs,” Brady (“Brady FAQs”), *available at* <https://www.bradyunited.org/program/combating-crime-guns/faqs>; Following the Gun at 41 (“Although FFLs were involved in under 10 percent of the trafficking investigations, they were associated with the largest number of diverted firearms – over 40,000 guns nearly half of the total number of trafficked firearms documented during the two year period”).

⁶⁵ *Id.*

⁶⁶ Brady FAQs.

⁶⁷ Webster, et al., “Effects of a Gun Dealer’s Change in Sales Practices on the Supply of Guns to Criminals,” Journal of Urban Health: Bulletin of the New York Academy of Medicine, Vol. 83, No. 5, 778, *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2438583/>.

⁶⁸ *Id.* at 784.

d. FFLs whose straw-purchased firearms are recovered in Chicago exemplify this nationwide trend.

While the tendency for only a small portion of FFLs to be responsible for illegal straw purchases and gun trafficking can be observed nationwide, it is particularly apparent in Chicago. According to ATF data, of all guns trafficked into Chicago, the majority of crime guns recovered can be traced to a small number of FFLs.⁶⁹ Defendant Westforth is one of the FFLs that is known to contribute to illegal sales of crime guns that are recovered in Chicago. Federal records establish that, between 2009 and 2016, for example, nearly 900 crime guns were traced to Westforth.⁷⁰ As further explained by Plaintiff, Westforth has failed to follow reasonable policies and accrued numerous violations of firearm regulations. *See City of Chicago v. Westforth Sports, Inc.*, No. 2021-CH-01987, Compl. at ¶¶ 3–4, 43–51. Indeed, beginning as far back as 1989 through today, Westforth has “routinely failed to accurately record sales” and “knowingly falsified sales logs.”⁷¹

Westforth is just one example of an FFL that does not follow reasonable policies and is disproportionately responsible for selling crime guns. It is these FFLs who are effectively turning a blind eye to straw purchasing and allowing it to continue.

V. FFLs Should Be Held Accountable For Facilitating Illegal Gun Purchases They Know, Or Reasonably Should Know, Will Be Used In Crimes Both In Their Communities And In Nearby States

It is important to understand that FFLs are under no obligation to sell a firearm to every customer who walks in; in fact, they have wide discretion to deny a sale. Licensed by the federal

⁶⁹ Gun Trace Report at 4–5 (listing the top ten dealers, including Westforth which provided the third highest amount of recovered crime guns into Chicago).

⁷⁰ City of Chicago at 5; *see also* Gun Trace Report at 4.

⁷¹ C. Barton, “Their Guns Fueled Chicago Crime. When They Broke the Law, the ATF Went Easy,” The Trace (Apr. 11, 2022), available at <https://www.thetrace.org/2022/04/chicago-gun-stores-atf-trace-report-inspection/>.

government and trained on how to detect straw purchasers and traffickers, FFLs are in the best position to spot an illegal sale and stop it before completion. And, as noted above, an overwhelming percentage of FFLs do this well and reasonably limit the volume of illegal sales coming from their stores. A small number of FFLs—like Defendant Westforth—however, remain responsible for numerous straw purchases and trafficked guns leaving their stores. Some FFLs knowingly participate in straw purchasing, while others, who choose to willfully blind themselves to red flags of a straw sale, have constructive knowledge of those sales. These FFLs are not “unknowingly” selling firearms to straw purchasers; rather, they have reason to believe these illegal sales are occurring but choose to look the other way.

Even if FFLs comply with basic statutory requirements, FFLs must be vigilant in detecting straw purchasers or suspected gun trafficking, and in refusing to make the respective questionable sale. The GCA prohibits an FFL from selling a firearm to an individual whom the FFL “knows or has reasonable cause to believe” is making an illegal purchase. *See generally* 18 U.S.C. § 922. When considering whether an FFL “knows or has reasonable cause to believe” a straw purchase is occurring, the FFL’s training to detect straw purchasing’s red flags must be taken into account.

In fact, FFLs often know, or reasonably should know, that they are making illegal sales and that those illegally sold firearms are likely to be used in crimes in other states or in their own communities. *See, e.g., Williams v. Beemiller*, 100 A.D.3d 143, 153 (N.Y. 2012) (holding an FFL in Ohio “expected or reasonably should have expected” obvious straw purchases to an interstate trafficker “would have consequences in New York”).⁷² FFLs should not be allowed to escape

⁷² The New York Court of Appeals ultimately affirmed dismissal of one of the three *Williams* defendants on jurisdictional grounds because it determined that there was not sufficient evidence of that defendant’s intent to supply the New York criminal market. *See Williams v. Beemiller*, 33 N.Y.3d 523, 530–31 (N.Y. 2019). In this case, by contrast, there is extremely clear and compelling evidence of Westforth’s intent to provide guns to the criminal market in Chicago. The Chicago police publicly identified Westforth as one of the top suppliers of crime guns recovered in and around Chicago since at least 2017. (Gun Trace

culpability because they choose to turn a blind eye to straw purchasers. Community safety relies upon FFL compliance⁷³ and, as the first line of defense, FFLs who knowingly put the public at risk must be held accountable.

a. FFLs Cannot Rely on Willful Blindness to Avoid Culpability.

Straw purchasers are inherently providing false information on ATF forms when making a gun purchase by concealing the intended possessor of the firearm. In many instances, straw purchasers engage in behaviors (such as purchasing multiple guns, visiting the store frequently, generally acting suspiciously within the store, making statements about the ultimate possessor) signaling that a straw purchase is being made. FFLs may opt to ignore this behavior to maintain an air of plausible deniability, relying on technical compliance with procedures and ATF forms without applying their training and better judgment. ATF agents have noticed this pattern, finding FFLs that are technically in compliance with the law by conducting background checks and asking for Firearm Owner's Identification ("FOID") cards, but looking the other way when a straw purchase is obviously occurring.⁷⁴

Courts have held that FFLs cannot avoid culpability by "purposefully disregard[ing]" the buyer's behavior. *Shawano Gun & Loan, LLC v. Hughes*, 650 F.3d 1070, 1076–77 (7th Cir. 2011)

Report, City of Chicago, 4 (2017), <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/October/GTR2017.pdf>; see also, e.g., Vernal Coleman, "Inside the Notorious Gun Shop Linked to Hundreds of Chicago Guns," ProPublica (Dec. 11, 2023), available at <https://www.propublica.org/article/westforth-sports-gary-indiana-chicago-guns-illegal-sales>. Yet Westforth chose to continue to employ—and profit from—the same irresponsible and negligent business practices despite knowing that these practices would lead to guns continuing to be channeled to criminals in Chicago.

⁷³ See "ATF Federal Firearms Regulations Reference Guide," U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (2014), available at <https://www.atf.gov/firearms/docs/guide/federal-firearms-regulations-reference-guide-2014-edition-atf-p-53004/download> (informing FFLs that they "play a key role in safeguarding the public from violent crime by maintaining accurate records, instituting internal controls, and performing background checks on potential firearms purchasers. These practices have saved lives, prohibited violent criminals from obtaining firearms, and preventing firearms-related crimes.").

⁷⁴ City of Chicago at 9–10.

(finding an FFL's violation to be "willful" because the FFL knew of the obligation and ignored it); *Carney*, 387 F.3d at 448–50 & nn.8, 10 (gun dealers' deliberate ignorance to a collection of clear red flags of straw purchasing sufficient to establish their constructive or "virtual" knowledge of the criminal scheme and upholding their convictions for, *inter alia*, aiding and abetting false statements by straw buyers under 18 U.S.C. 924(a)(1)(A)).

In a case relating to straw purchase sales in Illinois, the court discussed the findings from the Chicago Police Department's "Operation Gunsmoke," a sting operation where officers "behave[d] in a manner that would indicate that they were engaging in straw purchases." *Inglese*, 282 F.3d at 532–33 (affirming a jury verdict convicting FFL employees of knowingly making fraudulent sales relating to straw purchases). The court equated actual knowledge with "deliberate avoidance of knowledge," concluding the FFL employees were "deliberately ignorant" when they failed to ask follow-up questions "or take any action to find out whether straw purchases were occurring" when faced with "suspicious circumstances." *Id.* at 537–38. Accordingly, FFLs are not permitted to turn a blind eye to straw purchasing by willfully ignoring indicators of illegal sales. Those that do still "know or ha[ve] reasonable cause to believe" that their purchasers are violating the law.

b. FFLs know, or reasonably should know, interstate straw-purchased firearms will likely be used in the commission of crimes both in their communities and in other states.

If an FFL knows, or reasonably should know, a straw purchase is occurring in its store, that FFL also knows, or reasonably should know, that the illegally purchased firearm is likely to be used in the commission of a crime either in its community or in a nearby state. Awareness of the impact of illegal sales, both within their own communities and interstate, is even more acute for FFLs, such as Defendant Westforth, who have previously been sanctioned for facilitating illegal straw purchases and interstate gun trafficking. FFLs in these situations have the requisite

knowledge of illegal sales being made and of the likely violent consequences of those sales in their communities and neighboring states.⁷⁵

In varying circumstances, courts have recognized that FFLs have reason to believe guns sold illegally in their stores would be used in the commission of crimes. *See, e.g., U.S. v. Jemison*, 237 F.3d 911, 918 (7th Cir. 2001); *Minn. v. Fleet Farm*, 2023 WL 4203088, at *11–12 (D. Minn. June 27, 2023) ; *Rocha*, 2019 WL 4384465, at *5; *Midwest Sporting Goods Co.*, 328 Ill. App. 3d at 489–90. An FFL may have “reason to believe that the guns [it] sold would be used to commit a felony” if an illegal purchase is suspected. *Inglese*, 282 F.3d at 539. In *Jemison*, the court found a likelihood of knowledge where the FFL had reason to suspect the purchasers were gang members. *See Jemison*, 237 F.3d at 918 (noting “judges and the public are not blissfully ignorant of the connection between criminal violence and street gangs”). In the same way, FFLs who suspect they are selling firearms to straw purchasers have reason to believe those firearms will be used in crimes given the well-understood connection between straw purchasing and crime guns. This is further underscored by the fact that FFLs are faced with a “myriad of regulations, training, and resources . . . to identify and prevent straw purchases.” *Fleet Farm*, 2023 WL 4203088, at *11. As such, these FFLs “should have known there was a likelihood that the firearms would end up with wrongdoers who were highly likely to injure others.” *Id.* at *12.

Multiple courts have expressly or implicitly recognized that a straw purchaser’s subsequent actions in providing the firearm to another criminal who then uses it to shoot an innocent person is a foreseeable consequence of a gun dealer’s misconduct in completing an obvious straw sale.⁷⁶

⁷⁵ Defendant Westforth, located less than 10 miles from the Illinois border, has even more reason to know that its illegal sales will result in crimes in the neighboring state of Illinois.

⁷⁶ *See, e.g., Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 152 (N.Y. App. Div. 2012) *amd’d* by 103 A.D.3d 1191 (N.Y. App. Div. 2013) (it “was reasonably foreseeable that supplying large quantities of guns for resale to the criminal market would result in the shooting of an innocent victim”) (civil claims allowed against negligent and unlawful dealer who sold firearm used in shooting to allegedly transparent straw

Similarly, FFLs that have reason to believe their firearms are being trafficked to other states should know there is a likelihood those guns will be used in the commission of crimes in those states. Courts in New York have acknowledged this likelihood and found it plausible that FFLs “expected or reasonably should have expected” their straw purchased sales in Ohio to “have consequences in New York.” *Williams*, 100 A.D.3d at 153.

The same reasoning has been applied to out-of-state FFLs that supply crime guns that are recovered in Chicago. For example, in *Midwest Sporting Goods*, this Court examined the behavior of an out-of-state FFL who was aware of prior sales being funneled to criminals in Chicago but “did nothing to change its sales practices.” 328 Ill. App. 3d at 489. This Court recognized that an individual straw purchase may be an accident, but concluded:

This pattern and practice of entrusting guns to persons in a group with a known propensity to introduce the guns to the illegal secondary market, whence the guns reach the hands of persons inclined to use them in ways involving a known, great, and very unreasonable risk of harm to others, cannot qualify as accidental.

Id. at 490; *see also Rocha*, 2019 WL 4384465, at *5 (“The risk that straw purchases of firearms sold in Wisconsin might result in those firearms being used or possessed unlawfully in Chicago was more than speculation.”).

FFLs like Defendant Westforth have every reason to believe their illegally sold guns will be used to commit crimes both in their communities and in nearby states. While one illegal sale could be deemed an accident, the FFLs who are regularly supplying guns to straw purchasers are,

purchaser(s)); *Englund v. World Pawn Exch.*, 2017 Ore. Cir. LEXIS 3, *16–17 (Or. Cir. Ct. June 30, 2017) (“a foreseeable outcome arising from a seller of firearms violating gun safety laws that were designed to keep firearms out of the hands of dangerous people is that innocent people would be harmed or worse murdered”) (similar); *Corporan v. Wal-Mart Stores East, LP*, 2016 U.S. Dist. LEXIS 93307 (D. Kan. Jul. 18, 2016) (similar); *Chiapperini v. Gander Mountain Co., Inc.*, 13 N.Y.S.3d 777 (N.Y. Sup. Ct. 2014) (similar). *Williams* is also an illustration of the pattern of straw purchases in a jurisdiction with relatively lax gun laws being used to acquire guns an interstate trafficking conspiracy uses to supply criminal actors in a different jurisdiction with relatively strict firearms laws. *See Williams*, 100 A.D. at 145.

at a minimum, willfully blinding themselves to straw sales' occurrence. Straw purchasing and interstate gun trafficking are well-known occurrences and widely recognized across the United States. FFLs are specially situated to detect and prevent these sales, and most FFLs do their part. Those that do not, however, must be held accountable for their role in ensuing violent crimes. FFLs who repeatedly allow straw sales and interstate gun trafficking know, or reasonably should know, that those guns may be used in a crime in their own communities and/or in another state.

CONCLUSION

Lawmakers have passed laws to limit the number of guns falling into the wrong hands. FFLs have a responsibility to comply with these laws and prevent illegal gun sales whenever possible. FFLs cannot be allowed to turn a blind eye to them and are responsible for the outcomes of illegal sales that they never should have made. Moreover, FFLs know, or reasonably should know, that firearms sold to straw purchasers or gun traffickers are likely to be used in the commission of a crime in their own communities or in another state.

For these reasons, and those set forth in Plaintiff City of Chicago's submission, the court's decision finding no jurisdiction for lack of requisite intent on the part of Defendant Westforth should be overturned.

Dated: March 1, 2024

Respectfully submitted,

Giffords Law Center To Prevent Gun
Violence, Brady Center To Prevent Gun
Violence, Mayor and City Council of
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) & (b) and Rule 345. The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 29 pages.

/s/ Edward C. Young
Edward C. Young

NOTICE OF FILING and PROOF OF SERVICE

In the Appellate Court of Illinois
First Judicial District

CITY OF CHICAGO,)	
)	
<i>Plaintiff-Appellant,</i>)	
v.)	No. 1-23-1908
)	
WESTFORTH SPORTS, INC.,)	
)	
<i>Defendant-Appellee.</i>)	
)	
)	

The undersigned, being first duly sworn, deposes and states that on the 1st day of March 2024, there was electronically filed and served upon the Clerk of the above court the *Amicus Curiae* Brief of Giffords Law Center to Prevent Gun Violence, Brady Center to Prevent Gun Violence, Mayor and City Council of Baltimore, City of San Jose, and City of Kansas City in Support of Plaintiff-Appellant and Reversal and through the Odyssey eFile Illinois system, served on the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that six (6) paper copies of the Brief of Amicus Curiae bearing the court's file-stamp will be sent to the above court.

/s/ Edward C. Young
Edward C. Young

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Edward C. Young
Edward C. Young