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Hearing on

"From Festive Cheer to Retail Fear: Addressing Organized Retail Crime"

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Chairman Pfluger, Ranking Member Magaziner, and distinguished Members of the Subcommittee, I am pleased to appear before you today with our partnering organizations and leaders to discuss the strategies of International Council of Shopping Centers, Inc. (ICSC) and its members in combatting organized retail crime, or ORC.

ICSC's nearly 50,000 members in North America represent marketplace professionals, from retail center owner/developers to retailers to financiers and investors, the legal community, economic development officers and academics. ICSC promotes industry advancement and elevates the marketplaces and spaces where people shop, dine, work, play and gather as foundational and vital ingredients of communities and economies. 70% of shopping center tenants are small businesses.[1]

Today's retail centers are no strangers to change. Many in this room likely remember with fondness their first job, their first date, or providing your wish list to the mall's Santa Claus. Where once you might have found department stores and food court dining, you might now discover fitness centers, breweries, animal shelters, or pickleball courts. But despite the changes, traditional retailers remain the overwhelming majority of shopping center tenants.

Sadly, retail property owners are facing an unprecedented number of ORC incidents. ORC involves the illegal acquisition of retail merchandise in substantial quantities through both theft and fraud as part of an unlawful commercial enterprise. It is important to distinguish ORC from traditional shoplifting – or a single individual breaking the law. Traditional shoplifting is often done in response to food insecurity, substance abuse, or other mental health issues. It is largely spontaneous and self-serving. Though small-scale shoplifters should not avoid prosecution, ICSC recognizes that many of these individuals need to be treated separately from those who operate as part of a larger criminal enterprise focused on making a profit through the resale of stolen goods. ORC puts a more serious strain on business owners, particularly small businesses, in multiple ways, including customer and employee safety, reputation, and financial stability.

While high profile "smash-n-grab" robberies and nationwide cases involving major retailers garner the headlines this holiday season, the problem is pervasive, impacting retailers and centers large and small in all regions of the country. One major enclosed mall owner reports that retail crime theft incidents of over $1000 have nearly doubled over the past eight years. Violent crime, including aggravated assault, battery, and armed robberies have nearly tripled at those retail centers. And this is just what property owners know: many retail employees have simply stopped reporting incidents to local authorities, including on-site security, because they fear retaliation from thieves and their handlers. This behavior contributes to lack of prosecutions of ORC cases, and leads to difficulties in allocating public and

[1] ICSC data

private resources to combat ORC. This pattern of strained communication speaks to the necessity of formalized coordination among all stakeholders.

Thirteen states have passed legislation to create ORC task forces. We know state and local measures can be effective means of combatting ORC, but a comprehensive approach including federal law enforcement would be more effective.

Here are some pragmatic steps Congress and law enforcement can take to address ORC. First, building on the success of state and local ORC coordination centers, Congress can pass legislation to create a federal interagency ORC taskforce. There is broad bipartisan support for H.R. 895 the "Combating Organized Retail Crime Act of 2023" (CORCA). CORCA can make a meaningful impact on ORC by activating a federal coordination center, while also ensuring criminal penalties address the reality of how ORC enterprises operate. We thank Ranking Member Magaziner, and committee members Titus, D'Esposito and Correa for their cosponsorship of this important legislation.

Second, the federal appropriations process can also provide federal law enforcement agencies the resources and a mandate to investigate and prosecute ORC rings. Appropriators funded a similar and successful HSI initiative to combat IP theft with the creation of the National Intellectual Property Rights Coordination Center. We understand CORCA authors sought to replicate that success and use it as a model for the federal ORC Coordination Center.

Despite the rise in e-commerce in recent years, brick-and-mortar stores remain the main sales channel for most goods and services purchased in the United States.[2] However, the rise in ORC has contributed to the reasons why some retailers have chosen to close store locations. Store closures should not be taken lightly: they result in a significant loss of jobs, diminished state and local sales tax, loss of property tax collected, and food and prescription drug deserts. For instance, one grocery store typically creates $2.4 million in annual state and local sales tax and has an average of 133 jobs; a general merchandise store yields approximately $5.2 million and has an average of 188 jobs.[i] Store closures impact the entire ecosystem of a retail center and the community that it serves.

On behalf of ICSC I thank the Subcommittee and fellow witnesses for their interest and attention to this issue.

[2] Placer.ai https://www.placer.ai/library/uncovering-behaviors-and-characteristics-of-todays-consumer?form_type=Uncovering+Behaviors+and+Characteristics+of+Today%E2%80%99s+Consumer

Examples of Successful ORC Task Force Activity

California: *Since the inception of California's ORC Task Force in 2019, there have been more than 1,850 investigations into retail crimes in California that have resulted in over 1,250 arrests as of August 2023.[1] Led by California Highway Patrol, the key to the ORCTF's success is the partnership with retailers, property owners, local law enforcement, and district attorneys, to effectively disrupt organized retail theft rings and prosecute organized retail crimes. In the first five weeks of the Los Angeles County Sheriff's Department's Organized Retail Theft Task Force, teams made 89 arrests and $370,000 worth of stolen goods was recovered.*

Texas: *Comptroller Glen Hagar chairs an ORC Task Force consisting of a combination of representatives from retailers – Amazon, eBay, H-E-B, and several others – along with several law enforcement and state agencies.[1] The United to Safeguard America from Illegal Trade (USA-IT) organization says retail thefts in Texas totaled nearly $4 billion last year and cost state and local governments more than $343 million.*

New England: *The New England Organized Retail Crime Alliance (NEORCA) is a group of retailers who collaborate with law enforcement aimed at reducing property crimes, keeping shoppers safer and lessening their chances of becoming victims. An information sharing platform was established to allow NEORCA members to share information on ORC.[1]*

New York: *Last month, the chief of police in Syracuse said that the city has seen a 55% spike in shoplifting since 2021 — and that's a conservative estimate because it doesn't account for unreported incidents. The Retail Council of New York State says that store owners lost $4.4 billion in 2022 from theft alone. [1] New York City reports about a 50% increase in retail theft complaints across the city since 2018.[1]*

Arizona: *In early October, Phoenix Police announced that from September 12 to 15, 248 warrants were cleared, 64 people were arrested and five guns were seized as part of a multi-agency investigation into organized retail crime.*

Washington: *In 2023, Washington State's Attorney General created a centralized Organized Retail Crime Unit to coordinate, investigate and prosecute multi-jurisdictional retail crime statewide. This centralized unit has been praised by retail workers union and the business community alike, and just last month announced the first criminal prosecution by the newly established Organized Retail Crime Unit.[1]*

Illinois: *Attorney General Kwame Raoul has distributed out almost $5 million to nearly two dozen communities, including Oak Brook, Gurnee, Naperville and Orland Park. The Illinois Organized Retail Crime Task Force funded 25 police departments throughout the state. The task force pays for everything from overtime to license plate readers and surveillance systems that allow police to see what's happening before they even arrive.[1]*

Examples of Investments by Property Owners in Securing Shoppers, Workers, and Products

To thwart ORC operations, owners of retail centers have made substantial investments in advanced operational analytics, biometric data, license plate readers, heat maps, and other sophisticated technologies to help stem the tide of ORC without negatively impacting the customer experience. The reality is that some retailers have had to sacrifice the shopper experience by locking products behind Plexi-glass barriers. This technique, while ensuring product security, has had the effect of deterring customers from shopping in person.

Despite these investments, technology can only do so much because addressing the retail crime problem will require policy change. These investments are also conditioned on the effectiveness of prosecution.

The Loss Prevention Research Council (LPRC), based at the University of Florida, explains the below use of technology:

"Advanced case management and investigations enable collaboration within and between organizations because loss prevention practitioners can enter suspect information into a common database which can then be reviewed by others within the organization, or at other partnering organizations. This allows them to build cases (i.e., link multiple incidents to the same case). This is desirable because large cases (in terms of dollar amount) are more attractive to prosecutors and therefore more likely to be prosecuted. These offenders are also the ones creating the greatest losses to retailers.

Other technologies include license plate readers that enable retailers to enroll license plates into a system and then receive alerts when a vehicle associated with retail crimes enters parking lots. The same is true of face matching systems. These systems are being narrowly used for forensic purposes – that is, when an individual is found to be committing retail crimes, the are enrolled in face matching software. Then a retrospective search is conducted using available footage (e.g., past 30 days of retained footage) – this enables them to identify and investigate the times the suspect(s) were in their stores. Futhermore, this technology enables real-time alerts if retailers choose to use this option – once a suspect is identified and enrolled, retailers can receive alerts when that individual enters a store. Retailers are being very cautious to limit these programs and only use them for crime prevention and investigations.

Another solution is RFID. RFID enables item-level serialization of merchandise and other assets. Retailers know what is sold at the POS – if they know what merchandise leaves the store, they can reconcile transactions with merchandise leaving the store and identify likely thefts. This is not possible with current EAS systems because they do not enable item-level serialization. RFID can enable retailers to identify what is leaving a store, how many items, and exactly when those items left the store. These systems can be integrated with CCTV systems to capture footage of likely suspects. One of the most time-consuming aspects of retail crime investigations is reviewing video, so this can drastically reduce the amount of time required to identify a suspect.

However, once the RFID tag has left the building, it is still able to transmit a signal if it is pinged with a reader. Therefore, retail investigators and law enforcement can enter suspected fencing locations with a handheld RFID reader in a backpack and pick up all of the RFID tags associated with theft incidents. In other words, solutions like this help to link stolen merchandise at fencing and processing sites with the store where the theft occurred. This would also be useful for identifying that merchandise that is acquired during a controlled buy was stolen; for example, retailers will purchase merchandise online in hopes of determining whether the seller is selling stolen merchandise – RFID would streamline this process. For more solutions that I believe are promising or that have evidence of effectiveness, see (https://losspreventionmedia.com/technology-alone-will-not-solve-the-problem/)."

ECONOMIC FALLOUT OF STORE CLOSINGS

When stores start closing due to rising ORC, the effects are loss of jobs, loss of state and local sales tax generated, loss of property tax collected and a blight on the community. One grocery store typically creates $2.4 million in annual state and local sales tax and has an average of 133 jobs; a general merchandise store yields approximately $5.2 million and has an average of 188 jobs, a single drugstore generates nearly $1.2 million with an average of 27 jobs and a single apparel store, $423,000 with an average of 32 jobs. If store closings start increasing, sales tax and job losses quickly multiply, and the problems escalate.

ESTIMATED SALES TAX REVENUE GENERATED PER ESTABLISHMENT FROM COMBINED STATE AND AVERAGE LOCAL SALES TAX

	Combined State and Avg. Local Sales Tax Rate	General Merchandise	Food and Beverage (Grocery)	Apparel	Drug Stores	
Average Sales Per Establishment		$73,964,826	$34,070,115	$6,052,445	$17,066,999	
U.S. Total	7.0%	$5,170,141	$2,381,501	$423,066	$1,192,983	*U.S. tax rate displayed is the median of 50 states + D.C.
Alabama	9.3%	$6,841,746	$3,151,486	$559,851	$1,578,697	
Alaska	1.8%	$1,301,781	$599,634	$106,523	$300,379	*Average local tax rate in Alaska is 1.76%, state sales tax rate is 0%.
Arizona	8.4%	$6,190,856	$2,851,669	$506,590	$1,428,508	
Arkansas	9.5%	$6,997,073	$3,223,033	$572,561	$1,614,538	
California	8.8%	$6,523,698	$3,004,984	$533,826	$1,505,309	
Colorado	7.8%	$5,754,463	$2,650,655	$470,880	$1,327,813	
Connecticut	6.4%	$4,696,766	$2,163,452	$384,330	$1,083,754	
Delaware	0.0%	$0	$0	$0	$0	
District of Columbia	6.0%	$4,437,890	$2,044,207	$363,147	$1,024,020	
Florida	7.0%	$5,192,331	$2,391,722	$424,882	$1,198,103	
Georgia	7.4%	$5,473,397	$2,521,189	$447,881	$1,262,958	
Hawaii	4.4%	$3,284,038	$1,512,713	$268,729	$757,775	
Idaho	6.0%	$4,452,683	$2,051,021	$364,357	$1,027,433	
Illinois	8.8%	$6,523,698	$3,004,984	$533,826	$1,505,309	
Indiana	7.0%	$5,177,538	$2,384,908	$423,671	$1,194,690	
Iowa	6.9%	$5,133,159	$2,364,466	$420,040	$1,184,450	
Kansas	8.7%	$6,405,354	$2,950,472	$524,142	$1,478,002	
Kentucky	6.0%	$4,437,890	$2,044,207	$363,147	$1,024,020	

Louisiana	9.6%	$7,063,641	$3,253,696	$578,008	$1,629,898
Maine	5.5%	$4,068,065	$1,873,856	$332,884	$938,685
Maryland	6.0%	$4,437,890	$2,044,207	$363,147	$1,024,020
Massachusetts	6.3%	$4,622,802	$2,129,382	$378,278	$1,066,687
Michigan	6.0%	$4,437,890	$2,044,207	$363,147	$1,024,020
Minnesota	7.5%	$5,539,965	$2,551,852	$453,328	$1,278,318
Mississippi	7.1%	$5,229,313	$2,408,757	$427,908	$1,206,637
Missouri	8.3%	$6,161,270	$2,838,041	$504,169	$1,421,681
Montana	0.0%	$0	$0	$0	$0
Nebraska	7.0%	$5,140,555	$2,367,873	$420,645	$1,186,156
Nevada	8.2%	$6,087,305	$2,803,970	$498,116	$1,404,614
New Hampshire	0.0%	$0	$0	$0	$0
New Jersey	6.6%	$4,881,679	$2,248,628	$399,461	$1,126,422
New Mexico	7.7%	$5,710,085	$2,630,213	$467,249	$1,317,572
New York	8.5%	$6,301,803	$2,902,774	$515,668	$1,454,108
North Carolina	7.0%	$5,170,141	$2,381,501	$423,066	$1,192,983
North Dakota	7.0%	$5,155,348	$2,374,687	$421,855	$1,189,570
Ohio	7.2%	$5,355,053	$2,466,676	$438,197	$1,235,651
Oklahoma	9.0%	$6,642,041	$3,059,496	$543,510	$1,532,616
Oregon	0.0%	$0	$0	$0	$0
Pennsylvania	6.3%	$4,689,370	$2,160,045	$383,725	$1,082,048
Rhode Island	7.0%	$5,177,538	$2,384,908	$423,671	$1,194,690
South Carolina	7.4%	$5,495,587	$2,531,410	$449,697	$1,268,078
South Dakota	6.4%	$4,733,749	$2,180,487	$387,356	$1,092,288
Tennessee	9.6%	$7,063,641	$3,253,696	$578,008	$1,629,898
Texas	8.2%	$6,065,116	$2,793,749	$496,300	$1,399,494
Utah	7.2%	$5,318,071	$2,449,641	$435,171	$1,227,117
Vermont	6.3%	$4,659,784	$2,146,417	$381,304	$1,075,221
Virginia	5.8%	$4,252,977	$1,959,032	$348,016	$981,352
Washington	8.9%	$6,553,284	$3,018,612	$536,247	$1,512,136
West Virginia	6.6%	$4,844,696	$2,231,593	$396,435	$1,117,888
Wisconsin	5.4%	$4,016,290	$1,850,007	$328,648	$926,738
Wyoming	5.4%	$3,964,515	$1,826,158	$324,411	$914,791

[i] ICSC data