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June 9, 2023

Representative Andy Biggs
Chair
U.S. House Committee on the Judiciary
Subcommittee on Crime and Federal
    Government Surveillance
Washington, DC 20515

Representative Sheila Jackson Lee
Ranking Member
U.S. House Committee on the Judiciary
Subcommittee on Crime and Federal
    Government Surveillance
Washington, DC 20515

Re: June 13, 2023 House Judiciary Subcommittee on Crime and Federal Government
Surveillance Hearing: The Rise in Organized Retail Crime and the Threat to Public Safety

Dear Chair Biggs and Ranking Member Jackson Lee:

On behalf of the Computer & Communications Industry Association ("CCIA"),[1] I write to
provide policymakers with data and analysis to help inform consideration of policy questions
related to organized retail crime. Numerous CCIA members operate in the retail industry and
consider organized retail crime to be a persistent challenge their businesses face. CCIA
requests that this statement be included in the record of the hearing scheduled for June 13,
2023.

Retail inventory shrink ("shrink") is a longstanding challenge retailers face. For decades,
retailers in the aggregate have lost inventory amounting to about $1.40 per $100.00 in total
retail sales (plus or minus a few dimes). For years, about 37% of this shrink has been attributed
to external theft. One subcategory of external theft, "Organized Retail Crime" ("ORC"), has for
years been estimated at about $0.07 per $100.00 in retail sales. While ORC accounts for only
about 5% of total retail inventory shrink, the narrow margins in the highly competitive retail
industry give retailers reason to pay attention to every source of shrink. ORC has attracted
particular attention in recent years as a shrink source that could be mitigated by better
resources for law enforcement and prosecutors to work with retail businesses to pursue
criminals.

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[1] CCIA is an international, not-for-profit trade association representing a broad cross-section of technology and
communications firms. For more than 50 years, CCIA has promoted open markets, open systems, and open
networks. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and
development, and contribute trillions of dollars in productivity to the global economy. For more, visit
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I. Introduction

The retail industry is extremely competitive, and margins are often small. Retailers have to carefully manage costs like inventory "shrink." Shrink is the term retailers use to describe inventory losses from any cause—everything from shipping and storage mistakes to shoplifting to ringing up the wrong item at the register. Sources of inventory shrink are commonly categorized as process/control failures, employee/internal theft, external theft, and unknown or other. External theft encompasses multiple subcategories, such as organized retail crime ("ORC"), as well as shoplifting.

The definition of organized retail crime, the focus of this hearing, differs somewhat depending on the source. However, it is generally agreed that organized retail crime is a category distinct from shoplifting, characterized by multiple individuals with some connection to organized crime engaging in retail theft at scale on a repeated basis or at multiple locations, primarily for the purpose of resale rather than personal use.[2] The boundary between organized retail crime and repeat shoplifting can be somewhat imprecise, however, and the two activities can be conflated by researchers attempting to estimate trends due to differing definitions and incomplete knowledge of perpetrators' habits and organization or lack thereof.[3] Both organized retail crime and shoplifting are long-term challenges retail businesses face, and it is possible current figures are not accurately capturing the distinction between them.

When tracing organized retail crime trends across time, it is important to keep in mind a few considerations: Aggregate data tends to be less noisy than primary category data, which tends to be less noisy than subcategory data. This is especially true with retail inventory shrink data: the overall aggregate data can, in principle, be measured precisely by an audit of inventory against accounting records. Estimating the division of shrink among primary category sources, such as process/control failures versus external theft, versus internal theft, versus unknown/other, is inherently less precise. Some guesswork is involved, and a significant fraction of shrink remains ascribed to "unknown" sources.

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[2] *See, e.g.*, National Retail Federation, *Organized Retail Crime*, https://nrf.com/advocacy/policy-issues/organized-retail-crime (last accessed June 9, 2023).
[3] Sam Dean, *Retailers say thefts are at crisis level. The numbers say otherwise.*, Los Angeles Times (Dec. 23, 2021), https://www.latimes.com/business/story/2021-12-15/organized-retail-theft-crime-rate. *See also* Amanda Mull, *The Great Shoplifting Freak-Out*, The Atlantic (Dec. 15, 2021), https://www.theatlantic.com/health/archive/2021/12/shoplifting-holiday-theft-panic/621108/; Gabrielle Fonrouge, *Not just shoplifting: Here's why companies say retail theft is such a big deal*, CNBC (May 31, 2023), https://www.cnbc.com/2023/05/31/what-are-retail-shrink-and-organized-retail-crime.html.

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Allocating sources of shrink further to subcategories with somewhat imprecise definitions, such as organized retail crime versus shoplifting, inherently involves much more guesswork and extrapolation from smaller sample sizes, and is much noisier. As a result, subcategory estimates such as those for organized retail crime or shoplifting should be checked against trends in less-noisy higher categories, such as external theft as a whole. More work should be done to clear the noise from these subcategories.

II.   Total Retail Inventory Shrink

The National Retail Federation's ("NRF") annual National Retail Security Survey ("NRSS") is a commonly referenced source of retail industry data on retail inventory shrink and its causes. The data in the NRSS show that inventory shrink has been relatively flat since the mid-2000s. Average total retail inventory shrink in 2021, which accounted for 1.4% of retail sales, is consistent with prior measures from 2018, 2016, 2015, 2014, and 2009, and lower than 2020, 2019, 2010, 2008, 2006, and 2005.[4] In short, retailers have long lost, on average, about $1.40 of inventory per $100 of retail sales, and there has been neither a significant improvement across the past few decades, nor a significant worsening. See Figures 1 and 2 below, which show historical estimates from NRF NRSS reports.

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[4] National Retail Federation, *2022 National Retail Security Survey* (2022), https://cdn.nrf.com/sites/default/files/2022-09/National%20Retail%20Security%20Survey%20Organized%20Retail%20Crime%202022.pdf.

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Figure 1: NRF Average Retail Shrink
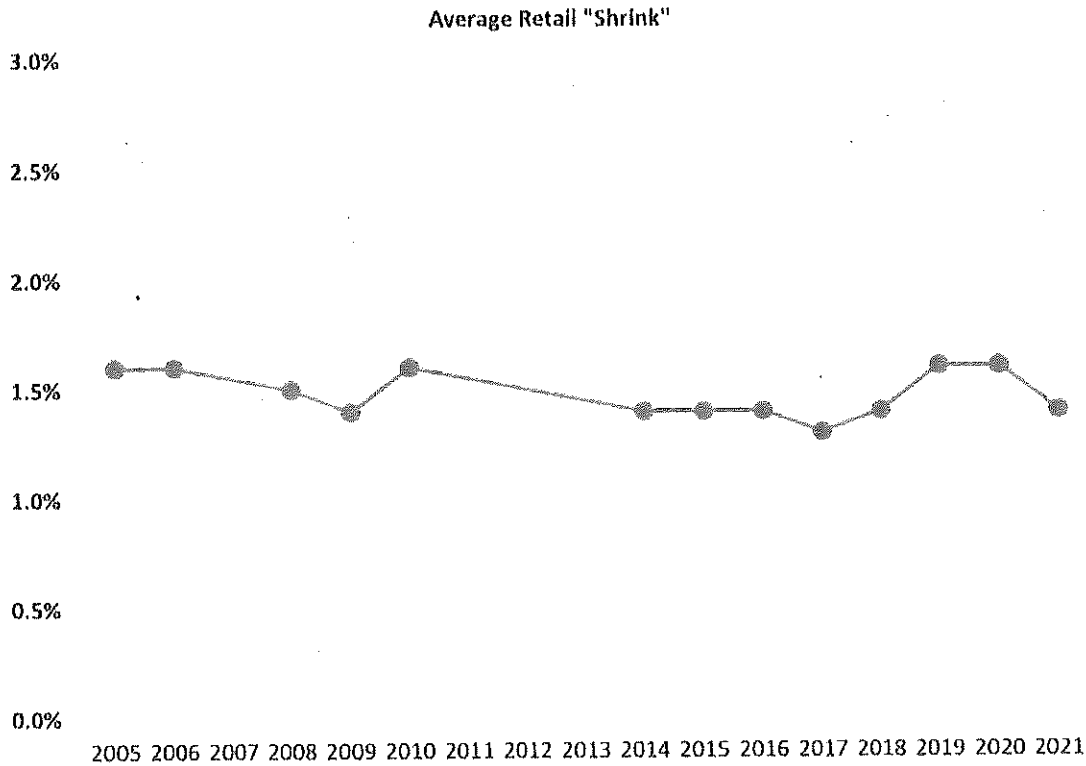
Average Retail "Shrink"

Figure 2: NRF NRSS Detailed Inventory Shrink Percentage Data for 2016-2021

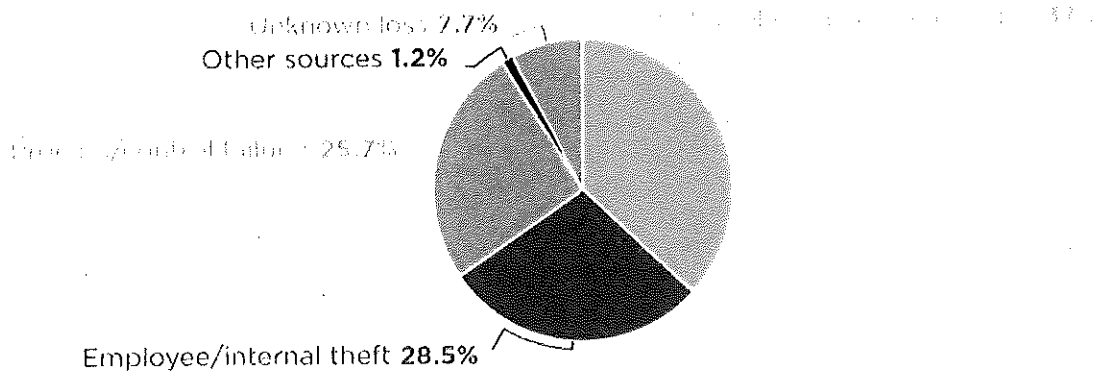Figure 10. Inventory Shrink Percentage Calculated at Retail

Category	FY 2021	FY 2020	FY 2019	FY 2018	FY 2017	FY 2016
3% and higher	10.7%	15.7%	18.2%	10.9%	9.1%	9%
Between 2% and 2.99%	16.1%	11.8%	9.1%	14.5%	10.9%	14.1%
Between 1.5% and 1.99%	8.9%	11.8%	15.2%	10.9%	12.7%	17.9%
Between 1.25% and 1.49%	8.9%	17.6%	7.6%	10.9%	9.1%	9%
Between 1% and 1.24%	17.9%	9.8%	19.7%	3.6%	16.4%	7.7%
Between .5% and .99%	19.6%	21.6%	16.7%	21.8%	20%	24.4%
.49% or lower	17.9%	11.8%	13.6%	27.3%	21.8%	17.9%
Average	**1.4%**	**1.6%**	**1.6%**	**1.4%**	**1.3%**	**1.4%**
Median	**1.2%**	**1.3%**	**1.3%**	**1%**	**1.1%**	**1.2%**

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III. The Share of Retail Inventory Shrink Attributable to External Theft

The share of retail inventory shrink attributable to external theft — the category that includes ORC — has been flat or declining since 2015. Around 37% of total shrink in 2021 was due to external theft, compared with 39.3% in 2016 and 38% in 2015.[5] See Figures 3 and 4 below, which show sources of shrink as reported in NRF NRSS reports. As the April 2023 NRF report on ORC acknowledged, there are deficiencies in the availability of consistent and consolidated data regarding ORC.[6] While I address ORC estimates in the next section, I would like to highlight the recognized shortcomings of the currently available data on ORC-specific losses. Policymakers may benefit from near-term efforts on improving data collection related to ORC to better inform any longer-term policy responses to ORC.

Figure 3: NRF 2021 Estimated Sources of Retail Inventory Shrink

Figure 11. FY 2021 Inventory Shrink by Source

Unknown loss 7.7%
Other sources 1.2%
Employee/internal theft 28.5%

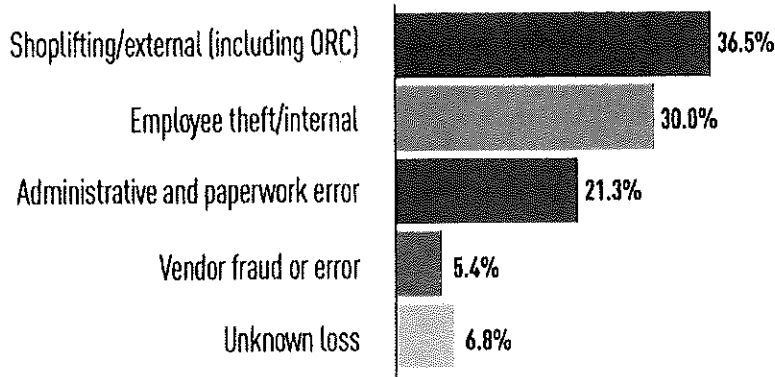[5] *Compare id. with* National Retail Federation, *2018 National Retail Security Survey* (2018), https://cdn.nrf.com/sites/default/files/2018-10/NRF-NRSS-Industry-Research-Survey-2018.pdf.

[6] National Retail Federation, *Organized Retail Crime: An Assessment of a Persistent and Growing Threat* (Apr. 2023), https://cdn.nrf.com/sites/default/files/2023-04/NRF-K2OrganizedRetailCrimeReportFinal.pdf.

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Figure 4: NRF 2015-2017 Sources of Retail Inventory Shrink

Source of Inventory Shrinkage (Average Proportion)

Source	Value
Shoplifting/external (including ORC)	36.5%
Employee theft/internal	30.0%
Administrative and paperwork error	21.3%
Vendor fraud or error	5.4%
Unknown loss	6.8%

	2017	2016	2015
Shoplifting/external (including ORC)	36.5%	39.3%	38.0%
Employee theft/internal	30.0%	35.8%	34.5%
Administrative and paperwork error	21.3%	16.8%	16.5%
Vendor fraud or error	5.4%	4.8%	6.8%
Unknown loss	6.8%	7.2%	6.1%

IV. The Share of Retail Inventory Shrink Attributable to ORC

The NRF has estimated that in 2019 and 2020, ORC-related loss amounted to between $700,000 and $720,000 per $1 billion in retail sales, which is about a $0.07 loss to ORC per $100.00 in retail sales.[7] This compares to about $1.60 in total retail inventory shrink per $100.00 in retail sales in the 2019 and 2020 data. Consequently, I estimate that ORC accounted for about 4.5% of total retail inventory shrink in 2019 and 2020. Using the 2020 NRF estimate of $720,000 in ORC per $1 billion in retail sales, scaled up by the U.S. Census

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[7] National Retail Federation, *NRF 2020 Organized Retail Crime* (2020), https://cdn.nrf.com/sites/default/files/2020-12/2020%20Organized%20Retail%20Crime%20Survey_0.pdf.
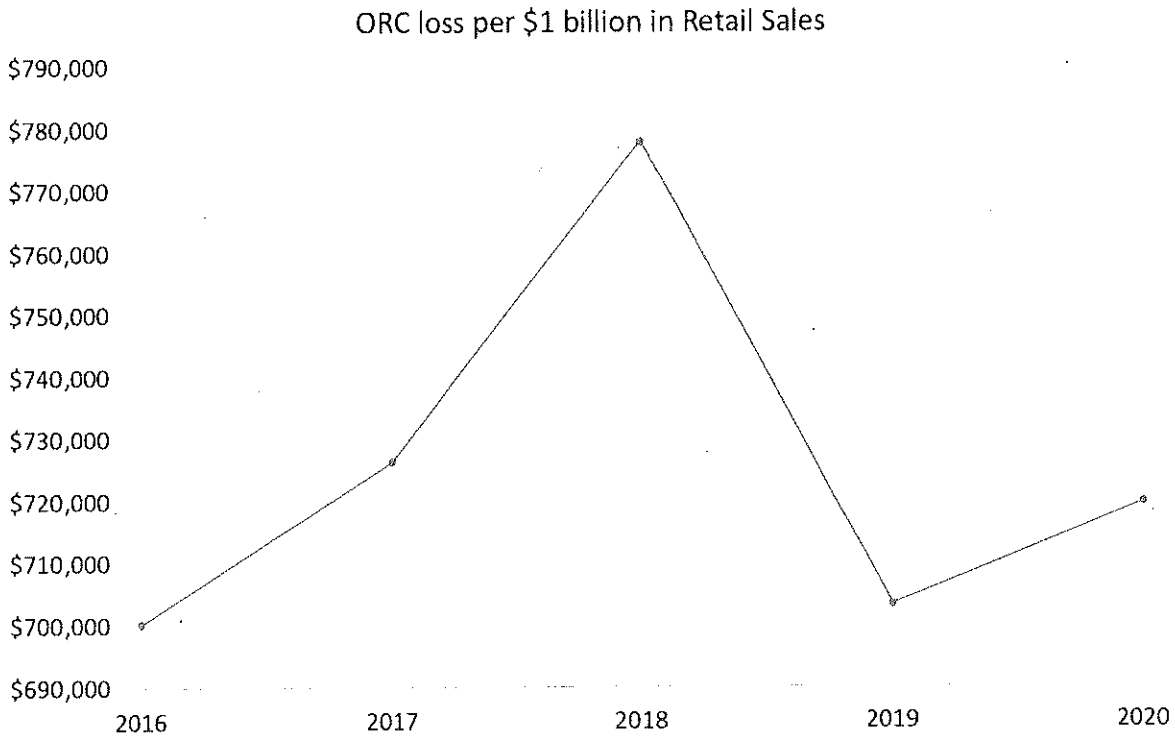
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estimate of $5.57 trillion in total retail sales in the United States in 2020, I estimate 2020 United States ORC-related losses at $4 billion in total.[8] I caveat this estimate with a reminder that currently available estimates of ORC-related losses are known to be deficient with respect to consistency and consolidation.

While $4 billion may sound small compared with $5.57 trillion ($5,570 billion) in total U.S. retail sales in 2020, the intense competition in retail means that such figures have to be taken seriously. For context, ORC is a smaller driver of retail inventory shrink than the widespread adoption of self-checkout machines in many stores,[9] but ORC was the third-highest risk and threat priority for retailers in 2021, just below non-ORC external theft (e.g., shoplifting). Narrow retail margins mean that retailers would benefit from increased assistance from law enforcement and prosecutors in combating ORC. The NRF's ORC survey estimates have varied slightly across time but remained range-bound, and reached their all-time peak in 2018. See Figure 5 for ORC estimates from NRF Organized Retail Crime surveys covering 2016-2020 — the most recent five years for which such data is publicly available. Estimates of ORC were somewhat lower in 2019 and 2020 than in 2018. In principle, ORC could have risen following the most recent data point in 2020, but such data does not appear to be publicly available.

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[8] St. Louis Federal Reserve database, *Retail Sales: Retail Trade*, https://fred.stlouisfed.org/series/MRTSSM44000USS (last accessed June 9, 2023).
[9] Adrian Beck, *Self-Checkout in Retail*, ECR (2018), https://www.ecrloss.com/research/self-checkout-research.

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Figure 5: NRF ORC Loss Estimate per $1 billion in Retail Sales, By Year

ORC loss per $1 billion in Retail Sales

V.   Correcting the Record on Erroneous Claims Made About ORC

It is important for policymakers to have accurate data as they work with the retail industry to address issues like ORC. Consequently, I would like to call out a few widely repeated misuses of data to ensure they do not confuse policymakers or the public.

For example, the Retail Industry Leaders Association ("RILA") has claimed that "ORC costs American retailers over $69 billion per year."[10] However, the 2021 RILA study on the subject produced an estimate of retail losses from *any* crime, including employee or internal theft, ordinary shoplifting, and ORC, and thus the $68.9 billion figure was *not* an ORC estimate.[11] Moreover, the methodology of the RILA study was extremely questionable: "This analysis is based on detailed data on retail theft in 2018/2019 provided by five major interstate retail

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[10] Retail Industry Leaders Association, *Organized Retail Crime, Counterfeits and Marketplaces*, https://www.rila.org/retail-works-for-all-of-us/ensuring-a-safe-sustainable-future/organized-retail-crime-counterfe its-marketplaces (last accessed June 9, 2023).
[11] Retail Industry Leaders Association, *Study: Retail Theft Balloons to Over $68 Billion* (Nov. 2021), https://www.rila.org/focus-areas/public-policy/study-retail-theft-balloons-to-over-68-billion.

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companies."[12] In other words, the underlying survey was only of five retailers, whose results were then extrapolated to the entire retail industry. Five retailers is a tiny sample size to draw industry-wide estimates from, and the choice to only include "major interstate retail companies" suggests an extreme selection bias. Moreover, if major interstate retail companies suffer higher rates of theft than other retailers, then extrapolating from the theft data of five such retailers to the entire retail industry, including independent retailers and state-specific retail chains, is an invalid approach and will produce significant overestimates.

The *Los Angeles Times* covered a related misuse of data, reporting in 2021 that California Retailers Association ("CRA") President Rachel Michelin claimed "that in San Francisco and Oakland alone, businesses lose $3.6 billion to organized retail crime each year."[13] The *Times* explained the implausibility of the claim, which turned out to be a "back of the napkin" estimate beginning with RILA's inaccurate claim of nearly $70 billion in ORC nationwide:

> That would mean retail gangs steal *nearly 25%* of total sales in San Francisco and Oakland combined, which amounted to around $15.5 billion in 2019, according to the state agency that tracks sales tax. Can that be right? In a word: no. The country's largest retail industry group, the National Retail Federation, estimated in its latest report that losses from organized retail theft average $700,000 per $1 billion in sales — or 0.07% of total sales — an amount roughly *330 times lower* than the CRA's estimate.[14]

The National Coalition of Law Enforcement and Retail ("CLEAR") and its President Brendan Dugan in 2021 disseminated an inaccurate ORC estimate, falsely claiming that ORC amounted to tens of billions of dollars per year in the U.S.[15] As reported by the *Los Angeles Times*, CLEAR made the mistake of treating the entirety of a prior NRF NRSS estimate of total retail inventory shrink as if it were an estimate of ORC-specific losses.[16] In actuality, the true ORC estimate from the NRF measures ORC alone, and was in the low single-digit billions of dollars — an order of magnitude smaller than CLEAR's claimed figure.

[12] John Dunham & Associates, *The Impact of Organized Retail Crime and Product Theft in the United States,* Retail Industry Leaders Association (2021), https://rilastagemedia.blob.core.windows.net/rila-web/rila.web/media/media/campaigns/buy%20safe%20america /fact%20sheets/the-impact-of-organized-crime-and-theft-in-the-united-states.pdf.

[13] Dean, *supra* note 3.

[14] *Id.* (emphasis added).

[15] Cleaning Up Online Marketplaces: Protecting Against Stolen, Counterfeit, And Unsafe Goods: Hearing Before the S. Comm. on Judiciary (Statement of Brendan P. Dugan, CFI, Director of Organized Retail Crime and Corporate Investigations, CVS Health), 118th Cong. (2021), https://www.judiciary.senate.gov/imo/media/doc/Dugan%20testimony.pdf.

[16] Dean, *supra* note 3.

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Relatedly, in the otherwise strong NRF report on ORC in April 2023, there was a factual error on page 21, where a claim was made that nearly half of retail inventory shrink was attributable to ORC.[17] The error resulted from citing the erroneous ORC claim made by the CLEAR and Dugan in 2021.[18] The April 2023 NRF report on ORC took that erroneous CLEAR figure — which was actually a prior year's NRF NRSS estimate of *total retail shrink*, and not an ORC estimate — and divided it by the most recent year's NRF NRSS estimate of total retail shrink. Comparing apples to apples within the NRF NRSS methodology shows ORC around 5% of total retail inventory shrink in recent years.

VI.   Conclusion

Retail inventory shrink is a longstanding problem for retailers, who operate in a highly competitive environment with often narrow margins. Thus, despite the long-term stability of shrink estimates at about $1.40 per $100.00 in total retail sales, retailers rationally seek to mitigate sources of shrink such as ORC. ORC represents only a small fraction of total retail inventory shrink in the best publicly available data — about $0.07 per $100.00 in total retail sales for the most recent years for which data is available — but ORC has attracted particular attention in recent years as a shrink source that could be mitigated by better resources for law enforcement and prosecutors to work with retail businesses to pursue criminals. As there are recognized deficiencies in the publicly-available data on ORC, policymakers may benefit from near-term efforts on improving data collection related to ORC. Improved data collection can inform future evidence-based policy responses.

Sincerely,

Trevor Wagener
Chief Economist and Director of the Research Center
Computer & Communications Industry Association

Cc: Members of the Subcommittee

[17] National Retail Federation, *Organized Retail Crime: An Assessment of a Persistent and Growing Threat* (Apr. 2023), https://cdn.nrf.com/sites/default/files/2023-04/NRF-K2OrganizedRetailCrimeReportFinal.pdf.
[18] Dugan, *supra* note 15.