

No. 21-667

In the
Supreme Court of the United States

NATHAN HATCH,

Petitioner,

v.

STATE OF MINNESOTA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF MINNESOTA

BRIEF FOR RESPONDENT IN OPPOSITION

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INTRODUCTION

Petitioner Nathan Hatch has asserted a facial constitutional challenge to Minn. Stat. § 624.714 (2018), stating in essence that the fundamental right described in the Second Amendment of the United States Constitution brooks practically no regulation for a “law abiding American citizen.” Respondent Metropolitan Airports Commission¹ is not being hyperbolic with regard to Petitioner’s goals—Petitioner, in his brief to the Minnesota Supreme Court, noted that “the type of arms U.S. citizens should be allowed to bear should be determined by what the enemies of the U.S. would have: if our enemies have machine guns (or what have you), then obviously, in order to adequately defend the U.S., U.S. citizens should have machine guns.” Petitioner further posited that “citizens need weapons at least as powerful as those held by our government, since a purpose of the Second Amendment is to be able to deter against government tyranny.” Petitioner completes his portrait of the boundless Second Amendment by contending in his Petition that any criminalization involving otherwise law-abiding citizens exercise of the right to keep and bear arms by the State should be prohibited. Pet. 5-6.

¹ Petitioner has misnamed the governmental body involved in this case. The Metropolitan Airports Commission is a public corporation created by the Minnesota legislature and endowed with certain aspects of a municipality. The Commission is responsible for the “use, management, operation, regulation, policing, and control of” the Minneapolis-St. Paul International Airport. Minn. Stat. § 473.621.

The Court should not give recognition to Petitioner's unfounded Constitutional positions and therefore should deny the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Petitioner was charged, in the State of Minnesota, Hennepin County District Court, with carrying or possessing a pistol "without first having obtained a permit to carry the pistol." Minn. Stat. § 624.714; App. 3. Petitioner moved the district court to declare Minnesota's statutory permit requirement unconstitutional. App. 3. The district court denied this motion, and Petitioner subsequently waived his right to trial and submitted his case on stipulated facts. *Id.* Petitioner was convicted and sentenced to 180 days in the county workhouse, execution of which was stayed for two years. *Id.*

Petitioner appealed as a matter of right to the Minnesota Court of Appeals, asserting that strict scrutiny should apply to his challenge of the statute, and that the permit requirement in Minn. Stat. § 624.714 infringed on his Second Amendment rights. App. 4. The Minnesota Court of Appeals did not determine the necessary level of scrutiny, but it determined that regardless, the statute survived a strict scrutiny analysis. *Id.* The Minnesota Court of Appeals therefore affirmed Petitioner's conviction. *Id.*

Petitioner then petitioned for review by the Minnesota Supreme Court, which affirmed the decision of the court of appeals. App. 9. In doing so, the Minnesota Supreme Court stated that "it is hard to imagine a less restrictive firearm permitting scheme

than the one provided by the permit-to-carry statute and its related provisions.” *Id.*

While the Minnesota Supreme Court also declined to announce a level of scrutiny for all statutes regulating firearms, it determined that Minn. Stat. § 624.714 withstood even strict scrutiny. *Id.*; *see also*, App. 5, n.2. Ultimately, the Minnesota Supreme Court held that “[c]onsidering the undisputed compelling governmental interest in ensuring public safety and the narrowly tailored provisions of the statute to achieve that interest, we conclude that the permit-to-carry statute withstands strict scrutiny. We therefore hold that the permit-to-carry statute does not violate the Second Amendment to the United States Constitution.” App. 9. This Petition followed.

REASONS FOR DENYING THE PETITION

Petitioner asserts that the Court should accept his Petition based on U.S. Sup. Ct. R. 10(c), which applies where “a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.” However, Petitioner fails to cite any conflict between the Minnesota Supreme Court’s decision and a “relevant decision [] of this Court.” Rather, Petitioner contends review is warranted because the Court should establish precedent on the applicable standard of review and because the statute the Minnesota Supreme Court ruled was constitutional infringes on the Second Amendment. Pet. Writ of Cert. at 5. The Court should deny the Petition because the Petition does not meet the criteria under which the

Court normally grants review, and because Petitioner seeks a drastic alteration of established Second Amendment and federalism principles.

I. THE ISSUE OF THE STANDARD OF REVIEW IS NOT A REASON FOR THE COURT TO GRANT A WRIT OF CERTIORARI.

Petitioner seeks a decision from this Court to establish two things concerning the standard of review: that laws impacting the Second Amendment are subject to strict scrutiny, and that the criminalization of failing to obtain a permit to carry a firearm in public violates strict scrutiny. *Id.* at 4-5. The Minnesota Supreme Court, as with the United States Supreme Court, has previously chosen not to specify a traditional standard of review that would be applicable to all cases involving firearms. App. 5, n.2 (“The issue of whether statutes regulating firearms are subject to strict or intermediate scrutiny is an open question in Minnesota.”); *Dist. of Columbia v. Heller*, 554 U.S. 570, 634 (2008) (“[Justice Breyer] criticizes us for declining to establish a level of scrutiny for evaluating Second Amendment restrictions.”).

In the case of the Minnesota Supreme Court, however, the statutory question now before this Court was evaluated under the heightened scrutiny sought by Petitioner, even if the Court did not commit to a categorical standard. Petitioner’s assertion of a need for this Court to impose a standard on the Minnesota Supreme Court that it already employed, therefore, is misplaced.

Understanding that the Petition unnecessarily seeks imposition of a standard of review that was already applied, Petitioner is left seeking review by this Court in an error-correcting capacity. This is not normally part of the criteria employed in evaluating a petition for writ of certiorari. *Barnes v. Ahlman*, 140 S. Ct. 2620, 2622 (Mem), (August 5, 2020) (Sotomayor, J. *dissenting*) (quoting S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, *Supreme Court Practice* § 5.12(c)(3), p. 5–45 (11th ed. 2019) (“error correction ... is outside the mainstream of the Court's functions and ... not among the ‘compelling reasons’ ... that govern the grant of certiorari.”)).

However, even were this Court to analyze this case in an error-correcting capacity, the Minnesota Supreme Court’s application of a strict scrutiny analysis was not improper. The court correctly stated that the analysis requires that a law be narrowly tailored to meet a compelling state interest. App. 5 (quoting *Brown v. Ent. Merch. Ass’n*, 564 U.S. 786, 799 (2011)). The court also properly stated that “[t]he narrow tailoring requirement, however, “does not require exhaustion of every conceivable . . . alternative, nor does it require a dramatic sacrifice of the compelling interest at stake.” *Id.* (citing *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 135 (Minn. 2014) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 339, 123 S. Ct. 2325, 2344 (2003)). Petitioner cannot reasonably ascribe any error to this analytical framework.

Petitioner’s “fatal in fact” approach to the application of strict scrutiny was also rejected by the Minnesota Supreme Court wholly aligns with this Court’s precedent. “Although strict scrutiny is ‘a demanding standard,’ the Supreme Court has rejected

‘the notion that strict scrutiny is strict in theory, but fatal in fact.’” *Id.* (quoting *Brown*, 564 U.S. at 799; *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 237 (1995)).

Petitioner would have this Court read out of the strict scrutiny test any possibility of a narrowly tailored burden being placed on Second Amendment rights. Pet. at 6 (“It must be declared that the legislature cannot criminalize pure Second Amendment behavior in this fashion.”). The Minnesota Supreme Court, however, properly found that the requirements of Minn. Stat. § 624.714 were “minimally burdensome.” App. 9.

The Minnesota Supreme Court’s conclusion that Minn. Stat. § 624.714 was narrowly tailored to meet a compelling governmental interest in ensuring public safety was not erroneous or improper. This Court, therefore, has no need to correct the Minnesota Supreme Court’s proper application of strict scrutiny, and it should deny the Petition.

II. PETITIONER’S CONTENTION THAT GUN PERMITTING STATUTES ARE PER SE VIOLATIONS OF THE SECOND AMENDMENT CONTRADICTS THIS COURT’S OWN PRECEDENT.

Petitioner’s core interest in seeking review by this Court is to have it create new law invalidating statutory gun-permit schemes that exist in the majority of States. Petitioner seeks to create a uniform national regime under a “constitutional carry” theory that is in effect in a minority of states, imposing this

theory over the judgment of the democratically elected representatives of the various states.

This Court has previously rejected the idea of removing all discretion to address the public safety concerns unique to each state: “The Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures regulating handguns.” *Heller*, 554 U.S. at 636. A little more than a decade ago, this Court reaffirmed that idea, recognizing that “[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment.” *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 784–85 (2010). The Court should reject Petitioner’s invitation to undo this precedent and further weaken the principles of federalism this Court has consistently recognized.

In fact, the Court has already, in *N.Y. State Rifle & Pistol Ass’n, Inc. v. Corlett*, (Docket No. 20-843), chosen not to accept the ultimate question Petitioner now asks the Court to address. In that case, the question the petitioner presented was “Whether the Second Amendment allows the government to prohibit ordinary law-abiding citizens from carrying handguns outside the home for self- defense.” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Corlett*, No. 20-843, 2020 WL 7647665, at *i (U.S. Dec. 17, 2020). While the Court granted review, it limited the question to: “Whether the State’s denial of Petitioners’ applications for concealed-carry licenses for self-defense violated the Second Amendment.” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Corlett*, 141 S. Ct. 2566 (Mem.) (Apr. 26, 2021).

This re-framing of the question demonstrates that a decision in *N.Y. State Rifle & Pistol Ass’n, Inc.*

would not affect the existence of all permitting schemes, but rather the denial of a permit in a non-“shall issue” scheme, which is wholly disparate from this case. It is reasonable, therefore, to conclude that the Court was not troubled by the existence of permits per se, but by the denial of a permit, which is not at issue in this case.

Minnesota’s “shall issue” permitting policy falls within the scope of longstanding reasonable regulations that this Court has endorsed, and which this Court had the opportunity to review in *N.Y. State Rifle & Pistol Ass’n*, but chose not to.

This is further reason that the Court should deny Petitioner Hatch’s Petition for a Writ of Certiorari.

CONCLUSION

Petitioner Nathan Hatch has sought review of a decision of the Minnesota Supreme Court that is not at odds with any precedent from the United States Supreme Court. Petitioner seeks the establishment of a strict scrutiny standard of review, but the Minnesota Supreme Court, while not declaring such a standard is required, did just that. Petitioner seeks to establish a national “constitutional carry” scheme by having this Court declare the act of requiring licenses, and criminalizing the failure to abide by the licensing statute, to be in violation of the Second Amendment.

As the Petition asks this Court to engage primarily in error-correction, and because this Petition ignores the fundamental federalism structure, as well

as the established precedent of this Court, the Court should deny the Petition.

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