

No. _____

In the
Supreme Court of the United States

NATHAN HATCH,
Petitioner,

v.

STATE OF MINNESOTA,
CITY OF MINNEAPOLIS AIRPORT COMMISSION,
Respondent.

**On Petition for Writ of Certiorari
to the Minnesota Supreme Court**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. WHETHER, BECAUSE, AS DECLARED BY JUSTICE SCALIA THAT OUR SECOND AMENDMENT RIGHTS ARE FUNDAMENTAL RIGHTS, THE UNITED STATES SUPREME COURT NEEDS TO DECLARE THAT A STATE STATUTE THAT INFRINGES UPON A UNITED STATES CITIZEN'S SECOND AMENDMENT FUNDAMENTAL RIGHTS TO KEEP AND BEAR ARMS MUST BE SUBJECTED TO A STRICT SCRUTINY ANALYSIS?

- II. WHETHER THE MINNESOTA CARRY PERMIT REQUIREMENT STATUTE THAT IMPOSES A GROSS MISDEMEANOR OR FELONY LEVEL PUNISHMENT FOR PURE SECOND AMENDMENT BEHAVIOR MUST BE STRUCK DOWN AS UNCONSTITUTIONAL?

- III. WHETHER UNDER MINNESOTA LAW, THE MINNESOTA CARRY PERMIT REQUIREMENT STATUTE MUST BE SUBJECTED TO A STRICT SCRUTINY ANALYSIS?

PARTIES TO THE PROCEEDING

Petitioner Nathan Hatch was the defendant in the trial court proceedings and Appellant in the Minnesota Court of Appeals and Minnesota Supreme Court. The State of Minnesota, City of Minneapolis Airport Commission, was the plaintiff in the trial court proceedings and Respondent in the Minnesota Court of Appeals and Minnesota Supreme Court. The Minnesota Attorney General's Office was a Respondent at the Minnesota Court of Appeals and Minnesota Supreme Court. The Minnesota County Attorneys Association and Suburban Hennepin County Prosecutor's Association were granted Amicus Curiae status in the Minnesota Court of Appeals and Minnesota Supreme Court.

STATEMENT OF RELATED PROCEEDINGS

Petitioner, Mr. Nathan Hatch, a former Marine, with an honorable discharge from serving in the military of the United States, was convicted of the crime of gross misdemeanor carrying a pistol in public without a permit, for simply having a pistol in his motor vehicle, pure Second Amendment behavior, and was subjected to a maximum punishment of up to one (1) year incarceration and up to a \$3000.00 fine. Further, under Minnesota law, if he ever does so again in his lifetime, he would be subject to conviction of a felony. Petitioner Mr. Nathan Hatch sought in the trial court, the Hennepin County District Court, court file number 27-CR-18-1074, State of Minnesota, Minneapolis Airport Commission v. Nathan Hatch, the Honorable Joseph Klein presiding, to have the carry permit requirement statute struck down on the

grounds that it is unconstitutional because it punishes pure Second Amendment behavior as a gross misdemeanor or felony, for simply carrying a pistol in public, if one does not first obtain a carry permit. Additionally, and importantly, a necessary issue that was raised with such statutory challenge is whether the statute is subject to a strict scrutiny analysis, as is required for all statutes which infringe upon a fundamental right, and Justice Scalia recognized that our Second Amendment rights are fundamental rights. In addition, it must be highlighted that Minnesota Statute section 624.714, subdivision 22 (2018), states that the Minnesota carry permit requirement statute must be construed according to the compelling state interest test, which of course refers to strict scrutiny.

The trial court denied Petitioner Mr. Nathan Hatch's motion to strike down the carry permit requirement statute on the grounds that it violates the Second Amendment and his Second Amendment rights. The trial court also erroneously concluded that the statute should be subjected to an intermediate standard of review.

Mr. Hatch then appealed as a matter of right to the Minnesota Court of Appeals, *State of Minnesota v. Nathan Ernest Hatch*, File No. A20-0176. The Minnesota Court of Appeals, in an unpublished decision, denied Petitioner Mr. Nathan Hatch's appeal to strike down the carry permit requirement statute on the grounds that it violates the Second Amendment and his Second Amendment rights. Without explicitly holding what level of scrutiny should be required, the Minnesota Court of Appeals applied the strict scrutiny

test and concluded the statute was not unconstitutional.

Mr. Hatch then sought and was granted review with the Minnesota Supreme Court, *State of Minnesota v. Nathan Hatch*, case number A20-0176. The Minnesota Supreme Court denied Mr. Hatch's appeal. The Minnesota Supreme Court however, failed to address the issue raised: that the imposition of gross misdemeanor and/or felony level punishments for pure Second Amendment behavior violates the Second Amendment. The Minnesota Supreme Court also failed to address whether a strict scrutiny level analysis applies to statutes which infringe upon our fundamental Second Amendment rights to keep and bear arms, and whether Minnesota law requires a strict scrutiny analysis be applied to the Minnesota carry permit requirement statute. The Minnesota Supreme Court also erroneously wrote that Petitioner did not dispute that the carry permit requirement statute serves a compelling government interest. To the contrary, during oral argument that question was posed, and counsel for Petitioner specifically argued that the State had not so shown, particularly since approximately 16 states have no carry permit requirement statute. Overall, with virtually no analysis, the Minnesota Supreme Court simply denied Petitioner's challenge, and failed to address whether a strict scrutiny level analysis is both required by case law, and, Minnesota statutory law.

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OPINIONS BELOW

1. State v. Hatch, Court File No. 27-CR-18-1074, Order, filed May 20, 2019.
2. State v. Hatch, unpublished opinion. File No. A20-0176 (Minn. Ct. App. filed Nov. 2, 2020).
3. State v. Hatch, File No. A20-0176 (Minn. Sup. Ct. filed Aug. 4, 2021).

JURISDICTION

Jurisdiction herein is based upon Rule 10(c) of the Rules of the Supreme Court of the United States. The Minnesota Supreme Court has decided an important question of federal constitutional law that has not been, but should be, settled by this Court. Namely, again, The Honorable Justice Scalia has recognized our Second Amendment rights to keep and bear arms are fundamental rights. Typically, all statutes which infringe upon fundamental rights are subject to a strict scrutiny analysis. The standard of scrutiny, strict scrutiny, for statutes which infringe upon Second Amendment rights has not yet been explicitly decided by our United States Supreme Court. This is an issue of critical national importance which needs to be so declared now.

Petitioner Mr. Nathan Hatch is seeking review of the decision of the Minnesota Supreme Court, filed August 4, 2021.

**STATUTORY AND CONSTITUTIONAL
PROVISIONS**

The Second Amendment to the United States Constitution provides as follows:

A well regulated Militia, being necessary to the Security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Const. amend. II (1791).

Mr. Hatch, Petitioner herein, has been convicted of violating the following statute:

Subd. 1a. Permit required; penalty. A person, other than a peace officer, as defined in section 626.84, subdivision 1, who carries, holds, or possesses a pistol in a motor vehicle, snowmobile, or boat, or on or about the person's clothes or the person, or otherwise in possession or control in a public place, as defined in section 624.7181, subdivision 1, paragraph (c), without first having obtained a permit to carry the pistol is guilty of a gross misdemeanor. A person who is convicted a second or subsequent time is guilty of a felony.

Minn. Stat. §624.714, subd. 1a (2018).

Subdivision 22 of section 624 of the Minnesota Statutes declares the following:

Subd. 22. Short title; construction; severability. This section may be cited as the Minnesota Citizens' Personal Protection Act of 2003. The legislature of the state of Minnesota recognizes

and declares that the [S]econd [A]mendment of the United States Constitution guarantees the fundamental, individual right to keep and bear arms. The provisions of this section are declared to be necessary to accomplish compelling state interests in regulation of those rights. The terms of this section must be construed according to the compelling state interest test. The invalidation of any provision of this section shall not invalidate any other provision.

STATEMENT OF CASE AND DIRECT AND CONCISE ARGUMENT AMPLIFYING THE REASONS FOR ALLOWANCE OF THE WRIT

Petitioner Mr. Nathan Hatch, a former Marine, who received an Honorable Discharge after having served in the United States' military, had a pistol in a backpack in the rear of his motor vehicle in public. He had not yet obtained a permit to carry from the State of Minnesota. Consequently, he was convicted of a crime, a gross misdemeanor, with a maximum penalty of up to one (1) year incarceration, and up to a \$3000.00 fine, with a permanent criminal record. Additionally, if he ever does so again, he is subject to being convicted of a felony. Petitioner Mr. Hatch contended that because the right to keep and bear arms is a fundamental right, that a strict scrutiny level of analysis must be applied. Petitioner Mr. Hatch also contended that the statute is subject to strict scrutiny because the enabling legislation, section 624 of the Minnesota Statutes, itself states that any review must apply the strict scrutiny test. Minn. Stat. §624.714, subdivision 22 (2018).

In the trial court, Petitioner Mr. Hatch brought a motion to strike down the statute on the grounds that it violates the Second Amendment, and, his Second Amendment rights. The trial court denied his motion, and, concluded that an intermediate standard of review applied.

In the Minnesota Court of Appeals, Petitioner Mr. Hatch took an appeal contending that because the right to keep and bear arms is a fundamental right, that a strict scrutiny level of analysis must be applied, and, that the statute violates the Second Amendment and his Second Amendment rights. Petitioner Mr. Hatch also contended that the statute is subject to strict scrutiny because the enabling legislation, section 624 of the Minnesota Statutes, itself states that any review must apply the strict scrutiny test. Minn. Stat. §624.714, subdivision 22 (2018). The Minnesota Court of Appeals concluded that the statute was constitutional, and, without stating what level of scrutiny applies, applied a strict scrutiny test.

First, the United Supreme Court should grant Petitioner Mr. Hatch's Petition for Certiorari because the question presented is a critical issue of national importance upon which the United States Supreme Court should rule.

The Second Amendment provides that we have fundamental rights to keep and bear arms. Keep means to possess. Bear means to carry. Accordingly, we have Second Amendment rights to possess firearms and carry them around—in public. It is an important question whether it is unconstitutional to criminally punish at a gross misdemeanor and/or felony level, a

law abiding American citizen, for pure Second Amendment behavior, i.e., simply carrying a pistol in public. The answer to that question has to be no. Further, this Court needs to strike down this statute as unconstitutional so that no further citizens are so wrongfully punished and given permanent criminal records for same.

It should also be highlighted that the arguments about public safety, and keeping firearms out of the hands of felons and criminals do not apply herein: these citizens are legal to possess and carry. This issue must not be conflated.

Second, the Minnesota Supreme Court has ruled upon the constitutionality of a state statute, which infringes upon the Second Amendment. The Minnesota Supreme Court erroneously ruled that this statute is constitutional and that Petitioner is now a criminal permanently.

Third, a decision by the United States Supreme Court will help develop and clarify the law in this area. A decision from the United States Supreme Court is needed declaring that both because Second Amendment rights are fundamental rights that this statute is required to be analyzed under a strict scrutiny analysis under well established case law, and, that a strict scrutiny analysis is required by Minnesota Statute section §624.714, subdivision 22 (2018). Currently, there is no clear precedent on these important issues. Further, it needs to be declared by the United States Supreme Court that it is like operating with a sledge hammer, rather than a scalpel, to impose a gross misdemeanor or felony punishment for engaging in the pure Second Amendment behavior of carrying a pistol

in public, for simply not obtaining a permit in advance. It must be declared that the legislature cannot criminalize pure Second Amendment behavior in this fashion.

Fourth, resolution of these questions will have national impact.

Fifth, these issues will recur unless resolved by the United States Supreme Court.

CONCLUSION

For all of the foregoing reasons, Petitioner, Mr. Nathan Hatch, by and through his attorney of record, Lynne Torgerson, Esq., respectfully seeks an Order granting his Petition for Certiorari of the decision of the Minnesota Supreme Court, and, for such other and further relief this Court deems just and equitable.

Dated: 11/1/21 Respectfully submitted,

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