

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Kristin Worth, Austin Dye, Axel
Anderson, Minnesota Gun Owners
Caucus, Second Amendment
Foundation, and Firearms Policy
Coalition, Inc.,

Plaintiffs,

vs.

John Harrington, *in his individual
capacity and in his official capacity as
Commissioner of the Minnesota
Department of Public Safety*, Don Lorge,
*in his individual capacity and in his
official capacity as Sheriff of Mille Lacs
County, Minnesota*, Troy Wolberson, *in
his individual capacity and in his official
capacity as Sheriff of Douglas County,
Minnesota*, and Dan Starry, *in his
individual capacity and in his official
capacity as Sheriff of Washington
County, Minnesota*,

Defendants.

Case No. 0:21-cv-01348 (NEB/LIB)

**DEFENDANT COMMISSIONER
JOHN HARRINGTON'S
STATEMENT OF THE CASE**

Pursuant to the Court's August 23, 2021 Pretrial Scheduling Notice and Order (Dkt. No. 21), Defendant Commissioner John Harrington submits the following as his Statement of the Case setting forth his version of the facts of the case and the particularized facts which support his defenses.¹ (*Id.* at 4-5.)

¹ Defendant John Harrington is not seeking any damages at this time.

In this lawsuit, Plaintiffs allege that the permitting scheme set forth in Minn. Stat. § 624.714—which prohibits individuals under the age of 21 from obtaining a permit to carry a loaded handgun in public—violates their rights under the Second Amendment. Plaintiffs’ claims fail for numerous reasons.

First, Minnesota’s permitting scheme is constitutional. *See State v. Hatch*, 962 N.W.2d 661, 665-66 (Minn. 2021) (“Considering 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.”). Firearm age restrictions, particularly for those for people under 21, fall outside the protection of the Second Amendment. *See, e.g., Nat’l Rifle Assoc. of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 193-204 (5th Cir. 2012); *Nat’l Rifle Ass’n of Am., Inc. v. McCraw*, 719 F.3d 338, 347 (5th Cir. 2013); *Nat’l Rifle Assoc. of Am., Inc. v. Swearingen*, ___ F. Supp. 3d ___, 2021 WL 2592545 (N.D. Fla. June 24, 2021); *Lara v. Evanchick*, ___ F. Supp. 3d ___, 2021 WL 1432802 (W.D. Pa. Apr. 16, 2021); *Jones v. Becerra*, 498 F. Supp. 3d 1317, 1325-27 (S.D. Cal. 2020); *Mitchell v. Atkins*, 483 F. Supp. 3d 985, 992-94 (W.D. Wash. 2020); *Powell v. Tompkins*, 926 F. Supp. 2d 367, 385-88 (D. Mass. 2013). Even if the Second Amendment protects the rights of individuals under the age of 21 to carry loaded handguns in public, Minnesota’s permitting scheme passes constitutional scrutiny. *See, e.g., Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d at 205-11; *McCraw*, 719 F.3d at 347-49 (“Texas determined that a particular group was generally immature and that allowing immature

persons to carry handguns in public leads to gun violence. Therefore, it restricted the ability of this particular group to carry handguns outside their vehicles in public. This means is substantially related to the Texas's state goal of maintaining public safety"); *Jones*, 498 F. Supp. 2d at 1327-30; *Powell*, 926 F. Supp. 2d at 389-93; *Mitchell*, 483 F. Supp. 3d at 996 (age restrictions on possession of firearms passed intermediate scrutiny because "18- to 20-year-olds are developmentally immature, commit a disproportionate share of violent crimes, and have been successful subjects of public health and safety regulation in the past. This combined with the dangers posed by [semiautomatic assault rifles], makes it reasonable for Washingtonians to anticipate that minimum age requirements for purchase and possession of [semiautomatic assault rifles] would also yield public health benefits.").

Second, Plaintiffs' claims may fail for additional reasons related to standing and mootness that will be the subject of fact discovery. For example, Plaintiffs may lack standing to challenge the 21-year-age requirement in Minnesota's permitting scheme if they fail to satisfy the other elements that would be necessary to obtain a permit to carry under Minnesota law.

Third, to the extent Plaintiffs bring claims against Commissioner Harrington in his individual capacity, Commissioner Harrington is entitled to qualified immunity. To the extent Plaintiffs are able to show that Minnesota's permitting scheme violated their Second Amendment rights (which they cannot), Commissioner Harrington is entitled to qualified immunity because clearly established, existing precedent did not place the "constitutional question beyond debate." *White v. Pauly*, ___ U.S. ___, 137 S. Ct. 548, 551 (2017). Given that the overwhelming majority of courts to consider similar statutes have found them to

pass constitutional muster, it certainly cannot be said that “controlling authority or a robust consensus of cases of persuasive authority” dictated that Commissioner Harrington should decline to enforce Minnesota’s permitting scheme against individuals under the age of 21.

This statement of the case is based on the facts currently known to Defendant Commissioner Harrington at this time and in advance of the commencement of fact and expert discovery. Defendant expressly reserves the right to supplement or amend this factual recitation.

Dated: September 23, 2021

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s/ **Cicely R. Miltich**

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