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# Hartford hunter asks Supreme Court to rule on felon gun ban

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By of the Journal Sentinel

**A** Hartford man charged with being a felon in possession of a firearm after he bagged two deer with his father's gun has asked the state Supreme Court to review his case.

Thomas M. Pocian, 44, of Hartford argues the state law that bans felons from carrying guns is unconstitutional because it doesn't distinguish between violent and nonviolent felons.

In 1986, Pocian was convicted of three felonies for writing nearly \$1,500 worth of forged checks with a friend. Pocian, who was 18 at the time, paid restitution and was sentenced to three years' probation, according to court records.

In November 2008, Pocian shot the two deer and registered them with the state Department of Natural Resources. Because Pocian used a gun, Washington County District Attorney Mark Bensen filed the new charge.

Pocian was charged under a state law that bans any felon from having or using a gun for any reason - for life. If convicted, he faces a maximum penalty of 10 years in prison, a fine of \$25,000, or both. The case is on hold while the appeal on the constitutional question is pending.

Pocian first asked Washington County Circuit Judge Todd K. Martens to throw out the charge. Martens refused.

In April, the state Court of Appeals agreed with Martens.

On Monday, Pocian filed a petition asking the state Supreme Court to review his case. Pocian argues the law «is unconstitutional as applied to him, considering the crime, the time that passed since his conviction and his law-abiding history.» It also is unconstitutional because it treats all felons the same - regardless of their crimes - and bans them from carrying guns without trying to determine whether they are likely to commit gun-related acts of violence in the future, Pocian's petition says.

Pocian also argued the law is overly broad.

«Oddly, although Wisconsin's felon-in-possession law includes countless nonviolent felonies, individuals convicted of violent and dangerous misdemeanors may retain their right to keep and bear arms,» the petition says. «This inconsistency tends to undermine the law's proffered public-safety basis.»

The fact that felons lose their right to bear arms forever is another problem, the petition says.

«Individuals convicted many years earlier of a nonviolent felony have no meaningful opportunity to regain their right to keep and bear arms for hunting or for defense of self, family and home,» the petition says. «However, upon completing their sentences, those same felons have their other fundamental civil rights restored, including their right to vote.»

The state attorney general's office is handling the case on appeal. Steven P. Means, executive assistant attorney general, said Monday the state had not yet filed a response.

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«Although I can't say definitively that we will oppose the petition before we actually analyze it, I don't know of any reason at this time why we wouldn't oppose it,» he said in an email.

In past filings, the state argued the Second Amendment applies only to self-defense and that the right to bear arms can be restricted by the Legislature to preserve public safety. And while state attorneys conceded that Pocian «at first blush, presents a sympathetic case,» they contended that all felons, regardless of the nature of their past crimes, pose a safety threat to the public.