No. 18-280

IN THE

Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ROMOLO COLANTONE, EFRAIN ALVAREZ, and JOSE ANTHONY IRIZARRY,

Petitioners,

v.

THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT-LICENSE DIVISION,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY IN SUPPORT OF SUGGESTION OF MOOTNESS

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INTRODUCTION

Petitioners' response to the City's Suggestion of Mootness confirms that the case is moot. Rather than contesting that they now may take all of the actions they sought in this lawsuit, petitioners try to raise a host of new transport issues under the new state law and city rule. But they are unable to identify any claim they actually pressed in the lower courts, or on their petition for certiorari, that remains unaddressed by the new laws.

Nor does the voluntary cessation doctrine prevent mootness here. The City has no desire to reinstate its former rule. But, in any event, state law unequivocally precludes that from happening. The Court need go no further.

ARGUMENT

A. The changes in state and city law give petitioners everything they sought in this lawsuit.

The new state law and city rule, individually and together, give petitioners everything they sought in their complaint. Both expressly authorize New York City residents who hold city-issued premises licenses to transport their handguns to the "only places" petitioners sought to establish the ability to take them: out-of-city shooting ranges and second homes. Pet. for Reh'g En Banc 1, 2d Cir. ECF No. 124; *see also* Pet. for Cert. i. Try as they might, petitioners fail to advance any reason why litigation on the merits should continue.

1. Petitioners first complain that the State's and City's new laws continue to reflect a view that the Second Amendment is "a homebound right." Opp. 13. This is not so. The new laws merely reflect the fact that a premises license—the subject of both amendments—is primarily a home-based authorization. New York State has a separate licensing scheme for carrying handguns outside of the home for self-defense. But that regime is not at issue here.

2. The various questions petitioners raise about the meaning and scope of the new laws likewise do not defeat the City's showing of mootness. Opp. 14–15, 20. Their new hypotheticals are outside the scope of the case, highly speculative, and present problems of standing, ripeness, or both.

a. *State law.* Contrary to petitioners' assertions (Opp. 19), there is no reason to believe the new state law prohibits holders of premises licenses from stopping "for coffee or gas" while transporting handguns to permissible destinations. A mere pit stop does not render a route indirect. If petitioners wish to take substantial detours while transporting their handguns, and they believe they have no way to do so under state law, they may bring a new lawsuit.

Petitioners next complain that the state law now permits non-city residents without city-issued premises licenses to transport their handguns to destinations in the City only with the NYPD's written authorization (whereas, before, they could not do so at all). Opp. 19–20. None of the individual petitioners, however, is a nonresident. This case, therefore, has never been about transport of handguns *into* the City—let alone transport by nonresidents who hold no

license issued by the City. Rather, the case has always been about petitioners' ability, as city residents holding city-issued premises licenses, to take their licensed handguns *out* of the City to specific destinations. Any constitutional claims about the new transport authorizations the state law provides to nonresidents must await a challenge by a party with standing to raise them—plus an interpretation of the law by state courts, or at a minimum, lower court review of how the requirement of administrative permission is implemented.

At any rate, Long Islanders who seek to pass through the City need not be concerned. *See* Opp. 20. The new state law allows non-city residents with non-city premises licenses to take their handguns through the City en route to a lawful destination on the other side of it—as confirmed by the memorandum of the bill sponsor.[1]

b. *City rule.* Because the new state law preempts any municipal law that is more restrictive, it does not matter whether the new city rule fully satisfies petitioners' claims. In any event, petitioners' various hypotheticals about their rights under the new city rule are not only outside the scope of this case, but mistaken.

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1. The sponsor's memorandum specifically states that non-city premises licensees "would not be prohibited from transporting a pistol or revolver through the City of New York in a continuous and uninterrupted manner and would not be required to obtain specific written authorization to do so." Suggestion of Mootness App. 17a. New York law accords considerable weight to such memoranda. *See Expressions Hair Design v. Schneiderman*, 32 N.Y.3d 382, 391 (2018); *Matter of Suarez v. Williams*, 26 N.Y.3d 440, 447 (2015).

Petitioners' purported confusion regarding the requirement in the City's rule that a shooting range be "lawful" (*see* Opp. 14) is easily dispelled. The word's plain meaning is well captured by the state statute's alternative phrasing: a lawful range is one "that is authorized by law to operate as such." N.Y. Penal Law § 400.00(6)(ii).

Petitioners also raise hypotheticals about summer rentals and relatives' beach houses where they have the right to possess their handguns. Opp. 15. But transport to such locations would fall within the state law's new catch-all provision. That provision authorizes premises licensees to transport their unloaded handguns to any in-state or out-of-state location where they may possess them under the relevant jurisdiction's laws. N.Y. Penal Law § 400.00(6)(iv).

At the very least, petitioners should not be able to interject brand new claims regarding city or state law without satisfying traditional requirements of actual injury, standing, and ripeness. None of those boxes are checked here.

Nor is there anything to petitioners' contention that the new city rule is insufficient to resolve their claims because they could face "adverse consequences" from past violations of the City's former rule. Opp. 18. None of the petitioners has alleged that he violated the former rule. Nor have petitioners asserted that the NYPD asks applicants to confess undiscovered rule violations during the licensing process—and, in fact, the NYPD does not do so. The wholly speculative future consequences described by petitioners cannot sustain their claims for prospective relief. *See Spencer v. Kemna*, 523 U.S. 1, 14–15 (1998); *Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).

3. Finally, petitioners insist that they would never have accepted an injunction giving them what the state law (and city rule) do. Opp. 14–15. But there is no need to resort to what-ifs. Petitioners repeatedly specified the injunction they sought. They asked the district court to enjoin respondents from enforcing the City's former rule "in any manner that prohibits or precludes the plaintiffs from traveling beyond either the borders of New York City or New York State with a licensed handgun to either travel to a second home or to attend a shooting range or competition." Not. of Cross-Mot. for Summ. J., S.D.N.Y. ECF No. 43; *see id.*, ECF Nos. 44, 53 (same); *see also id.*, ECF Nos. 8, 9. The changes in law more than cover that requested relief.

No more meritorious are petitioners' contentions about supposed differences between a "judicial declaration of a constitutional right" and a change in law. Opp. 16. If a request for the former were enough to prevent a case from becoming moot, *no* case could ever be moot. Yet this Court has adopted a consistent practice of dismissing or remanding cases seeking prospective relief when a change in law has given the plaintiffs everything they seek. *See* Suggestion of Mootness 9–11. Petitioners cite no case law to the contrary.

B. Voluntary cessation does not apply.

Petitioners are also wrong that the voluntary cessation doctrine prevents this case from being moot. *See* Opp. 22–31.

1. Petitioners do not dispute that the voluntary cessation doctrine is inapplicable where an entity

independent from the defendant takes the action that moots the case. Instead, they assert that the State's Legislature and Governor were somehow the City's pawns and not "genuinely independent" actors when enacting the new state law. Opp. 29.

This assertion is baseless. The City and State are separate political entities, and it is the City that is a department of the State—not the other way around. *See City of N.Y. v. State*, 86 N.Y.2d 286, 289–90 (1995) (holding that the City, as a department of the State, lacked capacity to sue the State). At any rate, the only "evidence" petitioners cite to establish that the State was under the City's control—a snippet from the floor debate by a bill sponsor—shows nothing of the sort. *See* Opp. 10, 28. The legislator simply said that he was unsure whether or how the new law would affect this case, but believed that "set[ting] a statewide standard for … safe transport … makes sense for the State of New York." *See* N.Y. State Assembly, Record of Proceedings (June 19, 2019) (Dinowitz Stmt.), https://bit.ly/2K9MPK9.

Nor does the new state law's distinction between the City and the rest of the State suggest any impropriety. *See* Opp. 29 n.3. Similar distinctions have long been present in New York's firearms laws. *See, e.g.*, N.Y. Penal Law §§ 400.00(6) (license validity), 400.00(10) (renewal periods). Such distinctions, indeed, run throughout New York's statutes. *See*, *e.g.*, N.Y. Pub. Health Law § 2168 (immunization registry); N.Y. Veh. & Traf. Law § 501 (drivers' licenses and learners' permits); N.Y. Civ. Serv. Law § 20(2) (civil-service procedures).

2. Because state law prevents the City from resuming the challenged conduct, the Court need not reach petitioners' argument that the voluntary cessation doctrine applies to the City's change in law. But there, too, petitioners are mistaken.

Petitioners first assert that "the City never actually promise[d] that it has no intention of reinstating its former rule." Opp. 28. But the City expressly stated in its Suggestion of Mootness (at 19) that it "has no intention of returning to its former regulatory scheme." Lest there be any confusion, we say it here again: The City has no intention of returning to its prior rule (even if it could, which it cannot).

Petitioners next attack the City for failing to cite any voluntary-cessation decision expressly distinguishing changes of law from mere changes in policy. *See* Opp. 26–27. But the reams of this Court's precedent—with changes in law on the one side, and mere changes in policy or practice on the other—speak for itself. *See* Suggestion of Mootness 18–19. It would be truly revolutionary to hold that a change in law (here, an administrative change following notice-and-comment rulemaking) is not enough to moot a case.

Perhaps sensing as much, petitioners fall back on their persistent theme that the City has failed to abandon "the whole enterprise" of issuing premises licenses and restricting residents' ability to transport handguns in public. Opp. 31 n.4. The City cannot be trusted, petitioners insinuate, because its new rule does not give them "an inch" more than they demanded in their complaint. *Id.* at 14.

But this is just another way of saying that the new law gives them everything they sought, thus confirming that the case is moot. A defendant who gives a plaintiff demanding $100 in damages exactly that amount cannot be criticized under Article III for failing to hand over $110. It makes no difference whether the defendant admits it was wrong or says it believes the plaintiff's view of the law is right. Once the concrete relief sought by the plaintiff is delivered, the case "los[es] its character as a present, live controversy of the kind that must exist if [this Court is] to avoid advisory opinions on abstract propositions of law." *Hall v. Beals*, 396 U.S. 45, 48 (1969) (per curiam).

* * *

At a bare minimum, petitioners' filing confirms that the matter should be remanded to the lower courts for further proceedings. Petitioners are now seeking numerous forms of relief they never argued for before, on behalf of individuals they have never identified as part of this case, and are raising points of law that range far beyond the question presented. When it comes to whether such new arguments preserve an Article III case or controversy, this Court—as with any other new arguments—is one "of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

This principle is all the more critical when new state-law arguments are intertwined with federal constitutional claims. Absent "a controlling interpretation of [a state statute's] meaning and effect by the state courts," *Arizonans for Official English v. Arizona*, 520 U.S. 43, 75 (1997) (internal quotation marks omitted), it would be far better to allow the lower courts to consider and sort

out the new claims than for this Court to proceed unaided by any lower court's opinion.

CONCLUSION

For the foregoing reasons, the Court should vacate and remand with instructions to dismiss—or at least with instructions directing the lower courts to apply Article III principles in the first instance to the current situation.

Respectfully submitted,

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