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July 8, 2019

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Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street, NW
Washington, DC 20543-0001

Re: *New York State Rifle & Pistol Ass'n v. City of New York*, No. 18-280

Dear Mr. Harris:

I represent petitioners in the above-captioned case, and I write in response to respondents' letter of July 3, 2019.

For the second time since the grant of certiorari, respondents inform this Court by letter of "recent developments" that they believe will moot this case. Just as with respondents' first effort, their latest letter is both premature and procedurally improper.

This time around, respondents point to two actions, neither of which has the force of the law. The first is a set of amendments to the Rules of New York City that were passed on June 21, 2019, and will not take effect for (at least) another two weeks, on July 21, 2019. The second is legislation that the New York State Assembly and Senate passed two weeks ago, on June 19 and 20, 2019, respectively, and that the Governor has yet to sign into law. Neither of these actions has changed the governing law in New York at this point. Once again, then, respondents' letter is both premature and procedurally improper.

As petitioners explained the last time respondents attempted to circumvent merits briefing (and this Court's review) through a premature and procedurally irregular letter, there is a proper time and place to raise their concerns about potential mootness. The time is after the change in the law takes effect, and the place is either in a motion to dismiss the petition as moot or as part of the already scheduled briefing on the merits. Letter of Paul Clement to the Honorable Scott S. Harris 2 (Apr. 19, 2019); *see* Sup. Ct. R. 21(2)(b). Those mechanisms allow both sides to address issues of mootness and exceptions to the mootness doctrine in an orderly and fair manner. Yet instead of following the procedures set forth in this Court's rules, respondents once again seek to

use a premature and procedurally irregular letter to avoid filing a brief defending the decision that they procured from the court below. This time, moreover, respondents take things an extraordinary step further, declaring that they have no intention of briefing the constitutional questions on which this Court granted certiorari even *if* they file a merits brief, and even though this Court has yet to consider their mootness claims.

There are very good reasons to follow the ordinary course and wait for changes in law to take effect, and only then address mootness through motions practice or merits briefing. Indeed, respondents' extraordinary efforts to avoid either defending their longstanding policy or definitely addressing the merits only underscore the prudence of addressing any mootness issues when they arise and in the fair and deliberate manner provided by this Court's rules. There are, after all, substantial reasons to doubt that these ever-evolving developments will actually moot this case, as it is not at all clear that the City has foresworn the power to control where its residents may transport their duly licensed handguns or that there are no continuing effects from past violations of licensing restrictions that the City has consistently maintained are consistent with the Second Amendment. As for the state legislation to which respondents point, it is not even clear that it will *ever* take effect, rendering the question of what effect, if any, it will have on petitioners' claims manifestly unripe.

Moreover, a party asserting that its own actions have mooted a case has "the 'heavy burden of persua[ding]' the court that the challenged conduct cannot reasonably be expected to start up again." *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000) (alteration in original) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)). That heavy burden should be heavier still where, as here, a defendant's about-face is unabashedly motivated by a desire to deprive this Court of jurisdiction to review the defendant's actions. *See Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012) ("Such postcertiorari maneuvers designed to insulate a decision from review by this Court must be viewed with a critical eye."). There are particularly strong reasons to doubt the sincerity of any claim that the City has forever changed its errant ways here given respondents' declaration that they have no intention of taking *any* position before this Court on the constitutionality of the rules that they have changed. Indeed, the procedural irregularity of respondents' actions to date makes plain that their goal is not just to try to moot this case, but to do everything they can to avoid ever having to take a definitive position on those issues. It is hard to understand why respondents are so reluctant to take any position on the questions on which this Court granted certiorari if they have no intention of resuming the challenged conduct or materially similar conduct in the future.

In all events, whatever the merits of respondents' mootness arguments, there is no reason to validate respondents' efforts to deviate from the ordinary procedures for bringing those arguments before this Court. Again, if and when respondents believe that petitioners' claims have *actually* become moot, they are free to file a motion or suggestion of mootness presenting all of

their arguments on that score, and petitioners will respond to that motion in due course. *See* Sup. Ct. R. 21(2)(b). In the alternative, respondents are free to brief their mootness arguments alongside their merits arguments in their response brief, which remains due on August 5, 2019. What respondents may not do is seek to preclude this Court from considering the merits of issues on which this Court granted certiorari by summarily declaring themselves so confident that they have successfully deprived this Court of the power to review the decision they procured below that they have no intention of briefing or arguing this case in the ordinary course.

Sincerely,

Paul D. Clement

cc: All counsel of record