

## **Comment in Opposition to the Proposed Amendment to Premise Handgun License Rules**

Up until April 12th, the city had vigorously defended the constitutionality of the handgun transportation rules that have been in place since 2001. It also secured a favorable ruling at the Second Circuit Court of Appeals, which said that the rule “does not violate” the Second Amendment, Commerce Clause, right to travel, or First Amendment<sup>1</sup>.

On November 9th, 2018, the city submitted a brief to the Supreme Court where it continued to defend the rule, arguing that the Second Circuit “faithfully applied the Court’s precedents” and that eliminating the target license allowed the city “to both reduce the number of firearms carried in public and enhance NYPD’s ability to verify a licensee’s statement that he is transporting his gun to or from an authorized range”. The city also argued that the rule is necessary because “NYPD observed widespread abuses of the target license”<sup>2</sup>. Even now, in this proposed rule, the department “continues to maintain” that the current rule “furthers an important public-safety interest”<sup>3</sup>.

Knowing this, why is the city suddenly proposing to change the rule? The answer: Because the Supreme Court has granted *certiorari* to the lawsuit challenging it. The city, anticipating its first loss in court, is now trying to modify the rule in an attempt to moot the case before oral arguments are scheduled. As part of this strategy, the city filed a motion asking the court to hold the briefing schedule while it attempts to make the modification<sup>4</sup>.

With the above in mind, I believe the city should return to defending the current rule, argue its merits before the Supreme Court, and stop trying to “deprive [the] Court of jurisdiction to review the favorable decision that [it] procured”<sup>5</sup>. Additionally, if the Supreme Court is intent on clarifying the standard of review used in Second Amendment lawsuits, there are at least four other cases awaiting it that could be substituted for this one<sup>6</sup>. Thus, even if this case becomes moot, the judgement that the city fears from the court may become reality anyway.

As evidenced by the denial of the city’s motion on April 29th<sup>7</sup>, it appears the Supreme Court is well aware that this process is “the product not of a change of heart, but rather of a carefully calculated effort to frustrate [the] Court’s review”<sup>5</sup>.

It is for the reasons above that I oppose the proposed rule.

References:

<sup>1</sup>*N.Y.S. Rifle & Pistol Ass'n, Inc. v. City of N.Y.*, 883 F.3d 45 (2d Cir. 2018):

<https://casetext.com/case/nys-rifle-pistol-assn-inc-v-city-of-ny>

<sup>2</sup>Brief of respondents City of New York, et al. in opposition:

[https://www.supremecourt.gov/DocketPDF/18/18-280/71552/20181109090818396\\_NYSRPA%20Brief%20in%20Opposition.pdf](https://www.supremecourt.gov/DocketPDF/18/18-280/71552/20181109090818396_NYSRPA%20Brief%20in%20Opposition.pdf)

<sup>3</sup>The Proposed Rule:

[https://rules.cityofnewyork.us/sites/default/files/proposed\\_rules\\_pdf/nypd\\_proposed\\_amendment\\_of\\_rules\\_governing\\_gun\\_possession\\_in\\_new\\_york\\_city\\_002.pdf](https://rules.cityofnewyork.us/sites/default/files/proposed_rules_pdf/nypd_proposed_amendment_of_rules_governing_gun_possession_in_new_york_city_002.pdf)

<sup>4</sup>Motion to hold the briefing schedule in abeyance filed by respondents City of New York, et al.:

[https://www.supremecourt.gov/DocketPDF/18/18-280/96331/20190412152613471\\_nysrpa%20v%20cny%2018-180%20ltr%204%2012%2019.pdf](https://www.supremecourt.gov/DocketPDF/18/18-280/96331/20190412152613471_nysrpa%20v%20cny%2018-180%20ltr%204%2012%2019.pdf)

<sup>5</sup>Response to motion from petitioners New York State Rifle & Pistol Association, Inc., et al.:

[https://www.supremecourt.gov/DocketPDF/18/18-280/97080/20190419134132164\\_2019-04-19%20NYSRPA%20response%20letter%20-%20FINAL.pdf](https://www.supremecourt.gov/DocketPDF/18/18-280/97080/20190419134132164_2019-04-19%20NYSRPA%20response%20letter%20-%20FINAL.pdf)

<sup>6</sup>*Mance v. Barr* (18-663), *Rogers v. Grewal* (18-824), *Pena v. Horan* (18-843), *Gould v. Lipson* (18-1272)

<sup>7</sup>Docket for 18-280: <https://www.supremecourt.gov/docket/docketfiles/html/public/18-280.html>