

Nos. 12-6056/6057/6182

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 29, 2013
DEBORAH S. HUNT, Clerk

MAXWELL'S PIC-PAC, INC.; FOOD WITH)
WINE COALITION, INC.,)

Plaintiffs-Appellees Cross-Appellants,)

v.)

TONY DEHNER, in his official capacity as)
Commissioner of the Kentucky Department of)
Alcoholic Beverage Control; DANNY REED, in)
his official capacity as the Distilled Spirits)
Administrator of the Kentucky Department of)
Alcoholic Beverage Control,)

Defendants-Appellants)
Cross-Appellees,)

and)

LIQUOR OUTLET, LLC, d/b/a The Party Source,)

Intervenor Defendant-Appellant)
Cross-Appellee.)

ORDER

Before: KEITH, CLAY, and STRANCH, Circuit Judges.

Defendants and Intervening Defendant appeal (Nos. 12-6056/6057), and Plaintiffs cross-appeal (No. 12-6182), a district court's order declaring unconstitutional a Kentucky statute and related regulation prohibiting the sale of wine and liquor at entities whose gross receipts for groceries or gasoline exceed ten percent of their monthly income. The district court stayed the implementation of its order until disposition of any appeals. Plaintiffs now move to lift the stay or, alternatively, seek to expedite briefing and oral argument. Defendants oppose the motion.

As a threshold matter, Defendants argue that we lack the authority to lift a stay issued by the district court. A district court may stay an interlocutory order or final judgment granting an injunction. Fed. R. Civ. P. 62(c). But Rule 62 does not limit the power of this court to restore an injunction while an appeal is pending, preserve the status quo, or preserve the “effectiveness of the judgment to be entered.” Fed. R. Civ. P. 62(g)(1), (2); *see also* Fed. R. App. P. 8(a)(2) (governing motions to stay the suspension of injunctions in the district court). Thus, we have the authority to lift the district court’s stay of its order should we choose to do so.

We consider the same factors to lift a stay that are considered in granting a stay: (1) whether the party seeking to lift the stay has a likelihood of success on appeal; (2) whether that party will be irreparably injured absent lifting the stay; (3) the harm to other interested parties; and (4) the public interest. *Serv. Emps. Int’l Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012) (per curiam). It is unclear whether Plaintiffs have a likelihood of success on appeal, given the heavy burden on them to demonstrate that the laws are “not rationally related to any conceivable legitimate legislative purpose.” *Hadix v. Johnson*, 230 F.3d 840, 843 (6th Cir. 2000). There is an obvious benefit to ceasing the enforcement of an unconstitutional law. But in the absence of a successful constitutional claim, the harm to the parties does not favor either side. Further, preserving the status quo is in the public interest. Thus, the district court’s stay of its order is appropriate, and we will not disturb its exercise of discretion in issuing that stay.

Alternatively, Plaintiffs seek to expedite briefing and oral argument. Despite our determination that the stay remain in place, we do not favor any unnecessary delay in proceeding given that the constitutionality of laws that are still being enforced is under consideration. Thus, expediting the appeal is appropriate.

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The motion to lift the stay is **DENIED**. The motion to expedite is **GRANTED**. Briefing shall be completed by February 11, 2013. The parties shall adhere to the briefing schedule issued by the clerk. No extensions of time will be granted in the absence of extraordinary reasons. Upon the completion of briefing, the clerk shall assign the appeals to the earliest available oral argument calendar.

ENTERED BY ORDER OF THE COURT



Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Filed: January 29, 2013

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Re: Case No. 12-6056/12-6057/12-6182, *Maxwell's Pic-Pac, Inc, et al v. Tony Dehner, et al*
Originating Case No. : 3:11-cv-00018

Dear Sir or Madam,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Jill Colyer
Case Manager
Direct Dial No. 513-564-7024

Enclosure

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Re: Case No. 12-6056/12-6057/12-6182, *Maxwell's Pic-Pac, Inc, et al v. Tony Dehner, et al*
Originating Case No. : 3:11-cv-00018

Dear Counsel,

The briefing schedule for this appeal and cross-appeal has been reset and the briefs listed below must be filed electronically with the Clerk's office no later than these dates.

First Brief:
Appellant/Cross-Appellee Brief
Appendix (if required by 6th Cir.
R. 30(a))

Limit 14,000 words
Filed electronically by **January 31, 2013**

Second Brief:
Appellee/Cross-Appellant Brief
Appendix (if required by 6th Cir.
R. 30(a) and (c)(2))

Limit 16,500 words
Filed electronically by **February 6, 2013**

Third Brief:
Appellant Reply/Cross-Appellee
Response Brief

Limit 14,000 words
Filed electronically by **February 11, 2013**

Fourth Brief:
Appellee/Cross-Appellant
Reply Brief (Optional)

Limit 7,000 words
Filed electronically **17 days after 3rd brief**

When you docket your brief in ECF, the correct entry for a cross-appeal is "First Brief," "Second Brief," and so forth.

A party desiring oral argument must include a statement in the brief setting forth the reason(s) why oral argument should be heard. *See* 6th Cir. R. 34(a). If the docket entry for your brief indicates that you have requested oral argument but the statement itself is missing, you will be directed to file a corrected brief.

In scheduling appeals for oral argument, the court will do what it can to avoid any dates which counsel have called to its attention as presenting a conflict. If you have any such dates, you should address a letter to the Clerk advising of the conflicted dates.

Counsel are strongly encouraged to read the latest version of the Sixth Circuit Rules at www.ca6.uscourts.gov, in particular Rules 28 and 30. If you still have questions after reviewing the information on the web site, please contact the Clerk's office before you file your brief.

Sincerely yours,

s/Jill Colyer
Case Manager
Direct Dial No. 513-564-7024

Enclosure

CHECKLIST FOR BRIEFS

ECF FUNDAMENTALS:

- ___ Briefs filed ECF unless filer is pro se or attorney with a waiver for ECF filings
- ___ PDF format required
- ___ Native PDF format strongly preferred
- ___ In consolidated cases (excluding cross-appeals), appellants should **un-check** the case number(s) that is/are not their case. The appellant's brief should appear only on the docket of his/her specific appeal.
- ___ Parties who have joined in a notice of appeal shall file a single brief. Fed. R. App. P. 3(b)(1)

COVER OF BRIEF (Fed. R. App. P. 32(a)(2)):

- ___ Sixth Circuit case number
- ___ Heading: "United States Court of Appeals for the Sixth Circuit"
- ___ Title of case
- ___ Nature of proceeding and name of court, agency or board below
- ___ Title of brief (example "Appellant's Brief")
- ___ Name(s) and address(es) of counsel filing the brief

CONTENTS (Fed. R. App. P. 28, 6 Cir. R. 28):

- ___ Corporate Disclosure Form
- ___ Table of Contents
- ___ Table of Authorities with page references (with cases alphabetically arranged, statutes and other authorities)
- ___ **Statement in support of oral argument** (if there is no statement, argument is waived)
- ___ ***Page limitation, word or line count begins here. See Fed. R. App. P. 32(a)(7)
- ___ Jurisdictional statement
- ___ Statement of issues
- ___ Statement of the case
- ___ Statement of facts **with references to record** (and appendix for any relevant pleadings not available ECF)

In an appeal from district court, briefs must cite to Page ID # range from header or footer of pages from original record being referenced, with short title and record entry number. Keep references **succinct**. For other appeals, see 6 Cir. R. 28 for information on how to reference appendices or administrative records. Examples:

Motion for Summary Judgment, RE 24, Page ID # 120-145
Transcript, RE 53, Page ID # 675-682
Plea Agreement, R. 44, Page ID # 220-225
A.R., RE 5, Page ID # 190-191, pp. 69-70

- ___ Summary of argument
- ___ **Argument with references to record and citations to case law, statutes and other authorities**
- ___ Standard of review (for each issue which may appear in discussion of each issue or under separate heading placed before discussion of issues)
- ___ Signed conclusion
 - Signature format is: s/(attorney's name)
 - Graphic or other electronic signatures discouraged
 - ***Page limitation, word or line count ends here.
- ___ A Certificate of Compliance as required by Fed. R. App. P. 32(a)(7)(C)
- ___ Dated Certificate of Service
- ___ **Designation of Relevant District Court Documents with Page ID # range**
- ___ Other Addendum contents allowed by Fed. R. App. P. 28(f) or 6 Cir. R. 28(b).
- ___ Addendum may **not** contain any items from lower court record or appendix

TYPEFACE AND LENGTH (See Fed. R. App. 32(a)(5) and (a)(7):

- ___ Typeface either proportionally-spaced font at 14 point (such as CG Times or Times New Roman) or monospaced font at 12 point (such as Courier New).

Times New Roman at 14 point Courier New at 12 point

- ___ Length for principal briefs: 30 pages OR up to 14,000 words (proportional fonts) OR up to 1300 lines (monospaced font)
- ___ Length for reply brief: 15 pages OR up to 7,000 words (proportional fonts) OR up to 650 lines (monospaced font)
- ___ Briefs using the 14,000 word or 1300 line limits must include word or line count in certificate of compliance (see Fed. R. App. P. 32(a)(7)(C))
- ___ Headings, footnote and quotations count toward word or line limitations
- ___ For Death Penalty briefs, see 6 Cir. R. 32(b)(2)

- ___ For Cross-Appeals, see Fed. R. App. P. 28.1
- ___ For Amicus briefs, see Fed. R. App. P. 29 and 32

MISCELLANEOUS:

- ___ Personal information must be redacted from the brief - see Fed. R. App. P. 25(a)(5) for specifics. When filing a brief, the ECF system will require attorneys to verify that personal information has been redacted.
- ___ Footnotes must be same sized text as body of brief