

W.D.N.Y.
20-cv-1176
Sinatra, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of January, two thousand twenty-one.

Present:

Guido Calabresi,
Reena Raggi,
Denny Chin,
Circuit Judges.

Michael Hund,

Plaintiff-Appellee,

v.

20-3908

Vincent G. Bradley, in his official capacity as Chairman of the State Liquor Authority,

Defendant-Appellant,

Governor Andrew M. Cuomo, in his official capacity as Governor of New York State,

Defendant.


Defendant-Appellant (the "State") moves for a stay pending appeal of the district court's November 13, 2020 preliminary injunction barring the State from enforcing a portion of the New York State Liquor Authority's *Phase 3/4 Guidelines for Licensed On-Premises Establishments* that permits only "incidental music" and prohibits establishments from presenting "advertised and/or ticketed shows" that are "the draw itself." New York State Liquor Authority, *Phase 3/4 Guidelines for Licensed On-Premises Establishments* (2020), <https://sla.ny.gov/phase3-guidelines-for-on-premises-licenses>. Upon due consideration, it is hereby ORDERED that the motion for a stay is DENIED, without prejudice, as set forth below.

As the parties acknowledged at oral argument on January 5, 2020, a state court has permanently enjoined enforcement of the guidelines in question, *see Sportsmen's Tavern LLC v. N.Y. State Liquor Auth.*, Index No. 809297/2020 (N.Y. Sup. Ct. Erie Co. Oct. 15, 2020), and state executive orders are in place that ban the operation of music venues independently of the State Liquor Authority guidelines. Hence, a stay is unnecessary, as the state court injunction bars the State from enforcing the guidelines and the executive orders bar Plaintiff-Appellee from performing in music venues in any event.

As the State has appealed the state court injunction to the Appellate Division and moved for a stay of the state court injunction pending appeal, the denial of the State's present stay motion is without prejudice to renewal if the Appellate Division should grant a stay in the state court proceedings.

It is further ORDERED that the appeal shall be considered on an expedited basis as follows: The State's brief shall be filed on or before January 27, 2021; Plaintiff-Appellee's brief shall be filed on or before February 17, 2021; and the State's reply brief, if any, shall be filed on or before February 24, 2021. The Clerk of the Court is directed to place this case on the first available calendar.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


The signature of Catherine O'Hagan Wolfe is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".