MINNESOTA STATE LAW LIBRARY

NO. A05-0912

State of Minnesota
In Supreme Court

All Parks Alliance for Change,

Petitioner,

v.

Uniprop Manufactured Housing Communities Income Fund, d/b/a Ardmor Village,

Respondent.

BRIEF OF RESPONDENT

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Table of Contents

Page

Table of Authorities ii

Issues Presented 1

Statement of the Case and Facts 2

Argument and Authorities 8

A. Standards of Review 8

B. Minnesota Statutes Section 327C.13 Does Not Require The Application Of First Amendment Jurisprudence To Minnesota Manufactured Home Communities 8

1. The Plain, Unambiguous Language Of Minn. Stat. § 327C.13 Does Not Implicate The First Amendment 9

2. APAC Urges A Dramatic Departure From Minnesota Common Law Without Sufficient Express Legislative Intent 13

C. Uniprop's Present Solicitation Rule Is A Reasonable Time, Place, And Manner Restriction Amply Supported By The Record Evidence 15

Conclusion 17

Certificate of Compliance 19

Table of Authorities

Federal Case Law **Pages**

Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980) 12

Dietemann v. Time, Inc., 449 F.2d 245 (9th Cir. 1971) 16

Martin v. City of Struthers, 319 U.S. 141 (1943) 17

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976) 12

Federal Statutes and Rules

United States Constitution 13

Minnesota Case Law

Agassiz & Odessa Mut. Fire Ins. Co. v. Magnusson, 136 N.W.2d 861 (Minn. 1965) . . 14

Brookfield Trade Ctr., Inc., v. County of Ramsey, 584 N.W.2d 390 (Minn. 1998) 8

Colburn v. Pine Portage Madden Bros., Inc., 346 N.W.2d 159 (Minn. 1984) 8

Copeland v. Hubbard Broadcasting, Inc., 526 N.W.2d 402 (Minn.App. 1995), review denied (Minn. Mar. 29, 1995) 16

Ed Herman & Sons v. Russell, 535 N.W.2d 803 (Minn.1995) 9

Harbal v. Fed. Land Bank of St. Paul, 449 N.W.2d 442 (Minn.App. 1989), review denied (Minn. Feb. 21, 1990) 8

McCaleb v. Jackson, 239 N.W.2d 187 (Minn. 1976) 13

Rehn v. Fischley, 557 N.W.2d 328 (Minn. 1997) 8

Special Force Ministries v. WCCO Television, 584 N.W.2d 789 (Minn. App. 1998) . . . 16

State by Beaulieu v. RSJ, Inc., 552 N.W.2d 695 (Minn. 1996) 8, 9

State ex rel. Childs v. Sutton, 65 N.W. 262 (Minn. 1895) 14

State v. Century Camera, Inc., 309 N.W.2d 735 (Minn. 1981) 13

State v. Davidson, 481 N.W.2d 51 (Minn. 1992) 13

State v. Hoyt, 304 N.W.2d 884 (Minn. 1981) 16

State v. Nelson, 671 N.W.2d 586 (Minn.App. 2003) 1, 9

State v. Wicklund, 589 N.W.2d 793 (Minn. 1999) 1, 14

Minnesota Statutes and Rules

Minn. Const. art. 1, § 3 14

Minn.R.Civ.P. 34. 02 . . . . . 10, 11

Minn.Stat. § 336.2-513 10

Minn.Stat. § 327C.13 . . . . . 1, 3, 7-14, 17, 18

Minn.Stat. § 595.024 12

Minn. Stat. § 609.605 16

Minn.Stat. § 645.16 9

Other State Statutes

Cal.Educ.Code § 48950(a).. 11

C.G.S.I. §31-51q.. 11-12

ISSUES PRESENTED

1. **Did The Court of Appeals Err In Concluding That Minn.Stat. §327C.13 Does Not Require The Application Of First Amendment Jurisprudence To Privately Owned Manufactured Home Communities?**

   The Court of Appeals held that Minn.Stat. §327C.13 does not require the application of First Amendment restrictions to privately owned manufactured home communities.

   Apposite Authority: Minnesota Statutes §327C.13
   State v. Nelson, 671 N.W.2d 586, 589 (Minn.App. 2003)
   State v. Wicklund, 589 N.W.2d 793 (Minn. 1999)

2. **Did The Court of Appeals Err In Finding That Uniprop's Present Solicitation Rule Is A Reasonable Restriction On The Time, Place And Manner Of APAC's In-Park Activities?**

   The Court of Appeals held that Uniprop's present solicitation restrictions on non-commercial speech are reasonable and not in violation of Minn.Stat. §327C.13.

   Apposite Authority: Minnesota Statutes §327C.13

Statement Of The Case And Facts

Uniprop Manufactured Housing Communities Income Fund ("Uniprop") is a Michigan limited partnership that owns and operates manufactured home communities including Ardmor Village. Ardmor Village is a manufactured home community located on private property in the City of Lakeville, State of Minnesota. (A. 112)[1]. All Park's Alliance for Chance ("APAC") is a Minnesota non-profit organization.

In 2004, it was the policy of Ardmor Village, and Ardmor Village's rules provide, that on-site solicitation and door-to-door canvassing in the Ardmor Village community is prohibited. *Id.* Individuals or organizations such as APAC could distribute their written materials to Ardmor Village residents by leaving copies of those materials in the Ardmor Village office located within the community. *Id.* The Ardmor Village office is open on Tuesday through Friday from 9:00a.m. to 5:00p.m.; Monday from 9:00 a.m. - 7:00p.m. and Saturday from 9:00a.m. to 12:00 noon. (A. 113). Individuals or organizations wishing to speak with Ardmor Village residents can hold meetings for approximately thirty (30) people at a time in the Ardmor Village community center. *Id.*

Uniprop's management has received complaints from residents in response to door-to-door canvassing by APAC as well as other organizations such as meat salesmen, Jehovah's Witnesses, magazine salespeople and newspaper salespeople. *Id.*

In March 2004, APAC filed suit in Dakota County District Court alleging that

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[1] Citations to Petitioner's Appendix are presented as (A. ____) while citations to the Court trial transcript are presented as (Tr.____).

Uniprop violated Minn.Stat. 327C.13. (A. 40). The district court granted a preliminary injunction restraining Uniprop from restricting APAC's in-park activities during the hours of 9:00 a.m. until 8:00 p.m., Monday through Saturday. (A. 35).

On August 13, 2004, Uniprop amended Ardmor Village's rules and regulations to provide:

> All Residents, guests and visitors must respect the rights of others to enjoy the quiet and peaceful use of the Community. All Residents, guests, and visitor must act in an orderly fashion and not engage in disruptive behavior.
>
> **Prohibited Conduct**
> The following examples of prohibited conduct will not be tolerated and apply to all Residents, guests and visitors. Any Resident engaging in this or similar disruptive conduct will be expected to stop immediately or will be served with a Notice of Violation. Engaging in prohibited conduct may result in eviction, as permitted by law.
>
> 1. **Business Activities.** Peddling, soliciting or conducting any commercial enterprise or profession, by a Resident anywhere within the Community is not permitted.
>
> Leafleting and canvassing is permitted on Monday through Friday between the hours of 11:00 a.m. and 6:00 p.m. in the Ardmor Village community for noncommercial purposes only. No leafleting, canvassing or door to door solicitation for any purpose is permitted in the Ardmor Village community on the home sites or at the residences of those community residents that have signed the "No Contact" list.
>
> The "No Contact" list is comprised of those residents that have chosen not to allow any leafleting, canvassing or door to door solicitation of any kind, regardless of purpose, at their home site. The "No Contact" list is

> available in the community office and must be reviewed by all individuals prior to any leafleting, canvassing or door to door solicitation in the Ardmor Village community. No leafleting, canvassing or door to door solicitation for any commercial purpose is permitted in the Ardmor Village community at any time for any reason.

(A. 116).

Thereafter, APAC filed a motion for summary judgment. The district court denied APAC's motion (A. 37) and this matter proceeded to a court trial on November 17, 2004, the Honorable Robert R. King, Jr., presiding.

During the trial, Ardmor Village manager Mary McGaffey testified as to the rationale underlying Uniprop's new no solicitation rule. Mrs. McGaffey testified that the "No Contact" list was " . . . generated to go along with our rule change for people that don't want to be contacted" (Tr. p. 75) and was designed to "promote the residents' peaceful enjoyment of their property." (Tr. 62). Mrs. McGaffey further testified that Uniprop's rule " . . . gives APAC the opportunity to contact the residents as well as offers other residents the opportunity not to be contacted. Id. As to the time limitations, Mrs. McGaffey testified that she believed the time limitations were reasonable because " . . . this is the time that APAC has always been on our property before, and I am a resident of the community as well. And personally speaking, I do not like to be bothered in the evenings."

At trial, Roger Moran and Katherine Dennen, two Ardmor Village residents on the No-Contact list, testified. Mr. Moran testified, "I don't want people coming to my door

disturbing me. I don't want literature on my door that flies away and gets all over my yard. I have a varied schedule, and I sleep at different times during the day, and I don't want people coming to my door that are uninvited that I have no interest in." (Tr. 86)

Ms. Dennen testified:

> Q: Do you want APAC to visit you at your home?
>
> A: No.
>
> Q: Do you want APAC to leave flyers for you at your home?
>
> A: No, sir.
>
> Q: Why not?
>
> A: I just don't like getting up and going to the door for something that I don't want to be involved with. (Tr. p. 80)

Both Mr. Moran and Ms. Dennen testified that they were not pressured or coerced into signing the "No Contact" list. (Tr. pp. 80, 87). APAC neglected to introduce any evidence that Uniprop had coerced Ardmor Village residents to sign the "No Contact" list.

After the close of evidence, the district court found:

- Uniprop's "No Contact" list included 24 of the approximately 280 occupied home sites located in Ardmor Village. (A. 10).
- Some of the residents of Ardmor Village, including at least two on the No-Contact list, have a desire to be left alone, and do not want any uninvited guests, including APAC, to come to their home sites. (A. 11).

- No evidence was presented to indicate that any resident on the No-Contact list was improperly on it or was coerced into signing it. *Id.*
- APAC usually leaflets the community during the early afternoon hours and holds its community meetings around 6:30 p.m. to 7:00 p.m. *Id.*
- Uniprop's restrictions on APAC's in-park activities were unreasonable.

Based upon these findings, the Court ordered:

> On the first day of every other month, starting in February 2005, the Defendant shall provide to a party designated by the Plaintiff, the current "no-contact" list. The Defendant shall also provide at that time a current count of the number of occupied units in the park. If, at any time, the total number of resident addresses on the "no-contact" list equals or exceeds 25 percent of the total occupied units in the park, the Plaintiffs shall have a right to petition the court for a hearing on the issue of whether or not residents are being improperly coerced or persuaded into signing the no-contact list. Should the Court then find that residents are being improperly coerced or persuaded into signing the no-contact list, the Court will then consider enjoining the use of said list.

(A. 13). The district court, in its amended order of March 1, 2005, revised Uniprop's solicitation rule, and limited APAC's in-park activities to the following times: 11:00 a.m. to 6:00 p.m. from September 1 through April 30 and from 11:00 a.m. to 7:00 p.m. from May 1 to August 30 with no canvassing allowed on Sundays. (A. 23). The district court further found that Uniprop's No Contact list was a reasonable restriction because " . . . the Plaintiff does not have the right to come onto the property of residents who have specifically stated that they do not want to have anyone solicit them." (A. 21).

Uniprop appealed the district court's award of attorneys' fees. APAC filed a notice

of review with respect to the legality of Uniprop's "No Contact" list and challenging the district court's interpretation of Minn.Stat. §327C.13.

The Court of Appeals upheld district court's determination that "people should have the right to be left alone." (A. 5). The Court of Appeals rejected APAC's argument that Minn.Stat. §327C.13 must be read to impose First Amendment principles upon Uniprop. The Court of Appeals found that "nothing in the language of the statute or its history indicates that the legislature intended to integrate Fist Amendment principles into this statute covering manufactured home communities." (A. 4). The Court of Appeals also held that the district court's newly created time limitations were not unreasonable. (A. 5).

APAC petitioned this Court for review of the Court of Appeals decision. This Court granted APAC's petition by Order dated May 24, 2006.

Argument and Authorities

A. Standards of Review.

The district court made three determinations that are before this Court. First, the district court held that Fist Amendment did not apply to Minn. Stat. §327C.13. Statutory construction is a question of law, which this Court reviews de novo. *Brookfield Trade Ctr., Inc., v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998); *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn.1996); *Harbal v. Fed. Land Bank of St. Paul*, 449 N.W.2d 442, 446 (Minn.App. 1989), review denied (Minn. Feb. 21, 1990).

Second, the district court held that Uniprop's restrictions on APAC's in-park activities violated 327C.13. When reviewing mixed questions of law and fact, this Court corrects erroneous applications of the law, but accords the lower court discretion in its findings of fact and ultimate conclusions. *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997). When reviewing the determination of a mixed question of fact and law, this Court will affirm if the findings of fact are supported by the evidence and if the conclusion based on those facts is consistent with the statutory mandate. *Colburn v. Pine Portage Madden Bros., Inc.*, 346 N.W.2d 159, 161 (Minn. 1984).

B. <u>Minnesota Statutes Section 327C.13 Does Not Require The Application Of First Amendment Jurisprudence To Minnesota Manufactured Home Communities</u>.

APAC asks this Court to impose the entire body of First Amendment jurisprudential limitations on Uniprop simply because section 327C.13 provides "a park owner may adopt and enforce rules that set reasonable limits as to time, place and manner." This Court should

decline APAC's invitation to take a quantum leap from the settled state of constitutional law for at least two reasons.

First, the plain, clear and unambiguous language of 327C.13 does not provide that a privately owned manufactured home community is subject to the restrictions of the First Amendment. Second, the Legislature has not evinced an intent to depart from the well settled common law that state action must be present before the protections of the First Amendment are triggered.

1. The Plain, Unambiguous Language Of Minn. Stat. § 327C.13 Does Not Implicate The First Amendment.

The Appellate Court's function in interpreting statutes is to ascertain and effectuate legislative intent. See Minn.Stat. § 645.16. "The fundamental rule of statutory construction is to look first to the specific statutory language and be guided by its natural and most obvious meaning." *State v. Nelson*, 671 N.W.2d 586, 589 (Minn.App. 2003). If a statute is unambiguous, its plain meaning is applied. *Beaulieu, supra*, at 701. A statute is unambiguous if it is not "reasonably susceptible to more than one interpretation." *Id.*

If there is clear manifestation of the legislature's intent through the statute's " 'plain and unambiguous language,' statutory construction is not necessary nor is it permitted." Minn.Stat. § 645.16 (stating that if a law is unambiguous, "the letter of the law shall not be disregarded under the pretext of pursuing the spirit"); *Beaulieu, supra,* at 701 (quoting *Ed Herman & Sons v. Russell*, 535 N.W.2d 803, 806 (Minn.1995)).

Minnesota Statues §327C.13 provides:

> No park owner shall prohibit or adopt any rule prohibiting residents or other persons from peacefully organizing, assembling, canvassing, leafletting or otherwise exercising within the park their right of free expression for noncommercial purposes. A park owner may adopt and enforce rules that set reasonable limits as to time, place and manner.

Importantly, the Legislature chose not to include the phrase "First Amendment" anywhere in the text of 327C.13. If the Legislature had wanted to include the phrase "First Amendment" in the statute, it would have done so. APAC, recognizing the Legislature's refusal to include the phrase "First Amendment" in the statute, falls back on the language "reasonable limits as to time, place and manner." Seizing on this language, APAC argues that the Legislature must have intended to invoke the First Amendment because this phrase is often associated with the First Amendment.

A review of Minnesota Statutes, however, reveals at least two other instances when the Legislature utilized nearly identical language yet never intended to implicate First Amendment jurisprudence. Minnesota Statutes Section 336.2-513[2] and Minn.R.Civ.P. 34.

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[2] Minnesota Statutes Section 336.2-513 provides:

> Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any *reasonable place and time and in any reasonable manner*. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival. *Id.* (Emphasis added).

02[3] of the Rules of Civil Procedure both contain reasonable time place and manner language yet neither implicate the First Amendment. Other state legislatures have indicated without ambiguity when First Amendment principals are to be considered.[4]

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[3] Minn.R.Civ.P. 34. 02 provides:

> The request may, without leave of court, be served upon any party with or after service of the summons and complaint. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify *a reasonable time, place, and manner* of making the inspection and performing the related acts. *Id.* (Emphasis added).

[4] California enacted legislation that provides:

> School districts operating one or more high schools and private secondary schools shall not make or enforce any rule subjecting any high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution.

Cal.Educ.Code § 48950(a).

Connecticut enacted legislation that provides:

> Any employer, including the state and any instrumentality or political subdivision thereof, who subjects any employee to discipline or discharge on account of the exercise by such employee of rights guaranteed by the first amendment to the United States Constitution or section 3, 4 or 14 of article first of the Constitution of the state, provided such activity does not substantially or materially interfere with the employee's bona fide job performance or the working relationship between the employee and the employer, shall be liable to such employee for

Even the Minnesota Legislature has specifically used the phrase "First Amendment" in at least one statute relating to the disclosure of confidential media sources. See "The Minnesota Free Flow of Information Act" at Minn.Stat. §595.024, Subd. 2. Accordingly, when a legislature wants to invoke the First Amendment, it is perfectly capable of doing so by using the phrase "First Amendment."

Indeed, the plain language of Minn.Stat. § 327C.13 not only fails to expressly embody the First Amendment, it expressly contradicts it. Minn.Stat. § 327C.13 offers no protection at all for commercial speech and, by its terms, permits manufactured home park owners to completely ban commercial speech for any reason or no reason at all. In this manner, Minn.Stat. § 327C.13 is directly contrary to the First Amendment.

Under Minnesota law, the First Amendment protects commercial speech. *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 561 (1980); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976). Commercial speech is provided "a limited measure of protection, commensurate with its subordinate position in the scale of first amendment values, . . .

> damages caused by such discipline or discharge, including punitive damages, and for reasonable attorney's fees as part of the costs of any such action for damages. If the court determines that such action for damages was brought without substantial justification, the court may award costs and reasonable attorney's fees to the employer.

C.G.S.I. §31-51q.

allowing modes of regulation that might be impermissible in the realm of noncommercial expression." *Central Hudson*, *supra*, at 589.

Finally, although the text of 327C.13 is clear and unambiguous, APAC refers to the legislative history. This Court should not look to the legislative history behind 327C.13 because the text of that statute is clear and unambiguous. "When the meaning of a statute is apparent from its language, no further statutory construction is permitted." *McCaleb v. Jackson*, 239 N.W.2d 187, 188 n. 2 (Minn. 1976).

Of course, if this Court does decide to review the legislative history, it will find that the phrase "First Amendment" does not appear anywhere in the legislative history. (A. 65-74). Again, if the Legislature did intend to burden privately owned manufactured home parks with First Amendment restrictions, it would have mentioned the phrase "First Amendment" at least once somewhere in the statute or legislative history. The fact that the phrase "First Amendment" does not appear anywhere in Chapter 327C or in the legislative history is fatal to APAC's argument.

Accordingly, the plain, clear and unambiguous language of 327C.13 does not require this Court to apply First Amendment jurisprudence to manufactured home parks.

2. APAC Urges A Dramatic Departure From Minnesota Common Law Without Sufficient Express Legislative Intent.

The free speech provision of the Minnesota Constitution does not extend any broader protection to speech than is provided by the United States Constitution. See, e.g., *State v.*

Davidson, 481 N.W.2d 51, 57 (Minn. 1992) (citing *State v. Century Camera, Inc.*, 309 N.W.2d 735, 738 n. 6 (Minn. 1981)).

The Minnesota Constitution provides . . . all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right." Minn. Const. art. 1, § 3. More than a century ago, this Court held that the protections of the Minnesota constitution are triggered only by state action. See *State ex rel. Childs v. Sutton*, 65 N.W. 262, 263 (Minn. 1895) ("[The Minnesota Constitution] stands, not only as the will of the sovereign power, but as security for private rights, and as a barrier against legislative invasion."). "The Minnesota Constitution does not accord affirmative rights to citizens against each other; its provisions are triggered only by state action." *State v. Wicklund*, 589 N.W.2d 793 (Minn. 1999).

As such, the state of the common law is clear: state action is a pre-requisite to First Amendment protections. "Ordinarily, statutes are presumed not to alter or modify the common law unless they expressly so provide . . . ." *Agassiz & Odessa Mut. Fire Ins. Co. v. Magnusson*, 136 N.W.2d 861, 868 (Minn. 1965). If the legislature had intended to change the longstanding common law rule that First Amendment protections are only triggered by state action, it would have done so with specificity when it enacted section 327C.13.

Accordingly, the Legislature has not evinced an intent to apply First Amendment restrictions on manufactured home parks in derogation of the common law.

C. Uniprop's Present Solicitation Rule Is A Reasonable Time, Place, And Manner Restriction Amply Supported By The Record Evidence.

Uniprop's present solicitation rule restricts the time of APAC's in-park activities and, to a lesser extent, the place of APAC's in-park activities. Specifically, Uniprop has restricted APAC from visiting in person those residents that have indicated they do not wish to be contacted at their home by any person for any reason. Also, there are restrictions on the hours during which APAC may conduct its in-park activities and there is no canvassing, leafleting or solicitation permitted on Sundays.

Further, the existing time limitations on APAC's activities are based on reason. First, permitting APAC in the park after 6:00 p.m. means that APAC may be in the park after dark during the months of October, November, December, January, February, March and April. That is the majority of the year. Second, the Court's decision is supported by Ardmor Village's interest in maintaining a safe neighborhood. Both of these interests are reasonably furthered by the Court's decision to limit APAC's in-park activities to Monday through Saturday, 11:00 a.m. until either 6:00 p.m. or 7:00 p.m. depending on the month.

Moreover, APAC cannot demonstrate any prejudice resulting from the evening time limitations. At trial, APAC, through Ned Moore, indicated that it mostly canvasses during the early afternoon hours or right before its meetings which begin at 6:30 p.m. - 7:00 p.m. The Court's order permits APAC to continue these activities and more.

Uniprop's "No-Contact" List is essentially an extension of existing Minnesota law. By and through the "No-Contact" List, the tenant in possession provides notice that no

visitors are welcome. Both the Minnesota Courts and the Legislature have expressly recognized that those lawfully in possession of property have a right to so exclude unwanted visitors.

Under Minnesota common law, a person commits trespass when that person enters another's land without consent. *Copeland v. Hubbard Broadcasting, Inc.*, 526 N.W.2d 402, 403 (Minn.App. 1995), review denied (Minn. Mar. 29, 1995). A civil claim of trespass does not require ownership; the right to possess is sufficient. See *State v. Hoyt*, 304 N.W.2d 884, 890 (Minn. 1981) (nursing home resident held to be in possession of nursing home property). The First Amendment does not insulate a person from liability for unlawful trespass. *Special Force Ministries v. WCCO Television*, 584 N.W.2d 789, 793 (Minn. App. 1998)(citing *Dietemann v. Time, Inc.*, 449 F.2d 245, 249 (9th Cir. 1971)) ("First Amendment is not a license to trespass, to steal, or to intrude by electronic means into the precincts of another's home or office").

Moreover, Minn. Stat. §609.605 provides that any person who "returns to the property of another with the intent to abuse, disturb, or cause distress in or threaten another, after being told to leave the property and not to return, if the actor is without claim of right to the property or consent of one with authority to consent"or who "returns to the property of another within 30 days after being told to leave the property and not to return, if the actor is without claim of right to the property or consent of one with authority to consent" is guilty of a misdemeanor.

Finally, as the United States Supreme Court wrote in *Martin v. City of Struthers*, 319 U.S. 141 (1943) :

> The National Institute of Municipal Law Officers has proposed a form of regulation to its member cities which would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed. *This or any similar regulation leaves the decision as to whether distributers of literature may lawfully call at a home where it belongs--with the homeowner himself.*

Id. at 148 (Emphasis added).

APAC's position is contrary to Minnesota law which grants Uniprop's residents the right to be free from unwanted intrusion in the property they possess. Uniprop's "No Contact" list is entirely consistent with both Minnesota common law and legislative acts. Accordingly, it was appropriate for the district court and the Court of Appeals to conclude that Uniprop's "No Contact" list was a reasonable restriction.

For these reasons, this Court should affirm the Court of Appeals' decision and uphold Uniprop's present restrictions on APAC's in-park activities.

Conclusion

APAC and the Amici Curiae invoke assumption and hypothetical scenarios at every turn to persuade this Court that Minnesota's manufactured home residents require heightened constitutional protections. This case, however, is not about what APAC and Amici Curiae believe. This case is about what the Minnesota Legislature intended by enacting Minn.Stat. §327C.13.

APAC seeks to impose the entire body of First Amendment jurisprudential standards upon Uniprop, a private landowner. The only restriction on Uniprop is the text of Minn. Stat. §327C.13. Accordingly, the question before the district court was not whether Uniprop ran afoul of the First Amendment. The question before the district court was whether or not Uniprop's restrictions were reasonable under Minn.Stat. §327C.13. The Court of Appeals properly concluded that the "No Contact" list is a reasonable restriction on APAC's speech.

Respectfully submitted,

Dated: July 26, 2006.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 132.01, the undersigned hereby certifies as counsel for Appellant that this brief complies with the type-volume limitation as there are approximately 4,729 words of proportional space type in this brief. This brief was prepared using WordPerfect 10.

Dated: July 26, 2006

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