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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 PETITIONER ALL PARKS ALLIANCE FOR CHANGE

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STATEMENT OF THE ISSUES

MINN. STAT. § 327C.13, ENTITLED "FREEDOM OF EXPRESSION," MANDATES THAT "NO [MANUFACTURED HOME] PARK OWNER SHALL PROHIBIT OR ADOPT ANY RULE PROHIBITING RESIDENTS OR OTHER PERSONS FROM PEACEFULLY ORGANIZING, ASSEMBLING, CANVASSING, LEAFLETING 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."

I. MAY A MANUFACTURED HOME PARK OWNER ENFORCE, AS A REASONABLE LIMIT AS TO TIME, PLACE AND MANNER, A PROHIBITION WITHIN THE MANUFACTURED HOME PARK OF ALL SUNDAY NONCOMMERCIAL LEAFLETING/CANVASSING AND THE ALLOWANCE FOR SUCH FREEDOM OF EXPRESSION ACTIVITIES ONLY BETWEEN THE HOURS OF 11:00 A.M. AND 6:00 OR 7:00 P.M. ON MONDAY THROUGH SATURDAY?

Minn. Stat. § 645.17, subd. 4

Clark v. Community for Creative Nonviolence, 468 U.S. 288 (1984)

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II. MAY A MANUFACTURED HOME PARK OWNER, CONSISTENT WITH MINN. STAT. § 327C.13, MAINTAIN A "NO CONTACT" LIST WHICH PROHIBITS ANY NONCOMMERCIAL CONTACT WITH A RESIDENT WHOSE NAME IS ON THAT LIST AND REQUIRES THAT SUCH A LIST BE REVIEWED AT THE PARK OWNER'S OFFICE BEFORE ANYONE CAN ENGAGE IN LEAFLETING, CANVASSING OR DOOR-TO-DOOR SOLICITATION IN THE PARK?

Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 536 U.S. 150 (2002)

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

STATEMENT OF THE CASE AND FACTS

The Minnesota Legislature enacted Minnesota Statutes Chapter 327C to regulate the relationship between a manufactured home park owner and its residents. Inherent in the statutory scheme is a recognition by the Legislature of the imbalance of power between the park owner and its residents and the need by the Legislature to enact legislation which would curb park owner abuses of power. (A. 71-72.) Chapter 327C includes § 327C.13, entitled "Freedom of Expression," which provides:

> No park owner shall prohibit or adopt any rule prohibiting residents or other persons from peacefully organizing, assembling, canvassing, leafleting 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.

The Petitioner/Plaintiff All Parks Alliance for Change (APAC) challenges the lower courts' interpretation and application of Minn. Stat. § 327C.13 to the undisputed facts of this case. The material facts are as follows.

A. The Parties.

1. Uniprop owns manufactured home communities.

Respondent/Defendant Uniprop Manufactured Housing Communities Income Fund, d/b/a Ardmor Village[1] is a real estate investment firm headquartered in Michigan. It declares itself to be "one of the nation's largest owners of manufactured home

[1] APAC will use the term Ardmor when referring to the specific park at issue. Uniprop will refer to its corporate owner and is the entity which promulgated the rules at issue.

communities." (A. 63.) The manufactured home park at issue is located in Lakeville, Minnesota. Ardmor, owned by Uniprop, has 339 home sites, with approximately 280 of those sites presently occupied. (A. 38.)

People who reside in manufactured housing tend to be economically vulnerable. (T. 18.) Residents of conventional manufactured home parks, like those at Ardmor, own their homes but rent the land under their homes from the park owner. (T. 17-18.) This leaves a resident subject to the whims of the park owner because their home may not be moveable or there may be no place to move. (T. 37; A. 71.) Because of such circumstances, the owners of such parks are in a unique position to take advantage of essentially a captive audience. (T. 17.)

2. APAC is a Minnesota nonprofit organization that seeks to educate residents of manufactured home parks about their rights.

APAC is a Minnesota nonprofit organization which was formed to educate manufactured home park residents about their rights under Minnesota law. (T. 16.) APAC's bylaws state:

> The primary purpose of this organization is educational. This organization will provide an effective voice for the low to moderate income manufactured home owners to express their needs and concerns in the community.

(Trial Ex. 1; T. 16; A. 86.) Ned Moore, a community organizer for APAC, explained why education of residents is important:

> You have parks that are essentially operating, sometimes even as almost private governments that have wide reaching

> authority to control the lives of the people that are living there.

(T. 17.)

APAC's members are manufactured home park residents across the state. (T. 16.) One joins APAC by filling out a form and paying $10.00 for dues each year. (T. 17.) Because park residents often have very low incomes, if someone cannot afford the $10.00 in dues, APAC allows membership without payment of dues. (Id.) APAC has two full-time employees and one part-time employee. (T. 21.) For petition drives or leafleting, APAC utilizes volunteers to participate in these activities within the parks. (Id.)

There are a number of ways in which APAC educates residents. One way is through outreach workshops which it holds for residents. This serves as an open forum to educate residents about their rights, such as eviction and park closing ordinances. (T. 18-19, 28; Trial Ex. 4; A. 93-101.) APAC informs residents of workshops through flyering and door to door communication. (T. 19.)

Another means APAC uses to educate residents is by having the residents form a resident association in their park. (T. 19-20.) Leadership is elected by the residents to represent the needs and concerns of the residents. (Id.) State law defines a resident association as an organization of residents that has written permission of 51% or more of the residents in the park. Minn. Stat. § 327C.01, subd. 9a.[2] (T. 20.) An association is formed by presenting a petition to the residents to join such an association. Because

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[2] Minn. Stat. § 327C.12(c) prohibits a park owner from retaliating against a resident because he or she joins such an association.

signatures are required, door to door communication during times when residents are most likely to be home is important. (T. 20.) APAC offers assistance to park residents in forming such an association. (T. 20-21.)

APAC also operates a hotline, whereby a resident can call with questions or concerns. (T. 18-19, 28; Trial Ex. 4.) If a situation is beyond APAC's expertise, APAC will refer the resident to a private attorney. (Id.)

B. Uniprop Prohibits APAC from Canvassing and Leafleting in Ardmor.

1. Uniprop prohibits APAC from leafleting on April 15, 2003.

On April 15, 2003, APAC went to Ardmor to leaflet. (T. 21.) APAC was not trying to sell or solicit anything from the residents, nor was APAC knocking on residents' doors. (T. 27-30.) APAC was simply leaving flyers in English and Spanish on residents' doors which contained basic information about APAC, a brief description of its services, and specific information about programs with respect to manufactured home cooperatives. (T. 28; Trial Ex. 4; A. 93-101.) APAC also informed residents of upcoming informational meetings where they could learn more about their rights. (Id.)

While leaving flyers for APAC, Jess Luce was stopped by Ardmor's manager, Douglas McGaffey. (T. 22, 69; A. 58.) Mr. McGaffey asserted that soliciting was not allowed in the park, to which Mr. Luce responded that APAC was not soliciting. Mr. Luce presented Mr. McGaffey with a copy of Minn. Stat. § 327C.13 and a letter from APAC's attorney. (A. 58-59.) Mr. Luce explained that he was passing out information about APAC to educate residents about their rights. (Id.)

Mr. McGaffey summoned the Lakeville police, who required Mr. Luce and APAC workers Ned Moore and Amanda Jackson to produce their drivers' licenses. (A. 59-60.) Their identifications were run through the Lakeville police's computer and no violations/warrants were found. (Id.) The officer then called his superior. The information relayed was that APAC needed to prove it was a legal, registered nonprofit organization and must carry around a certificate of its 501(c)(3) status. (A. 59-61.) It was agreed that APAC would fax to the Lakeville police department a copy of APAC's 501(c)(3) status, which it did. APAC was asked to leave the premises and APAC complied. (Id.; T. 21-23.)

2. Uniprop prohibits APAC from leafleting in June 2003.

In June 2003, Mr. Moore and Ms. Jackson returned to Ardmor to pass out flyers. (A. 52, 55.) Ardmor's manager – Mr. McGaffey – again approached them. (Id.; A. 55-56.) Mr. McGaffey made it clear that they had to leave and if they did not leave, he would have them removed from the park. (T. 23; A. 52-53, 55-56.) Mr. Moore again presented Mr. McGaffey with a copy of Minn. Stat. § 327C.13. (T. 24.) Mr. Moore and Ms. Jackson were nonetheless told to leave the premises. (Id.)

On the way to the Ardmor management office, a resident stopped Ms. Jackson and asked if she had left the APAC flyer on her door. (A. 57.) When Ms. Jackson acknowledged she had, the resident told Ms. Jackson that she and others had issues with Ardmor's management and she was happy to hear someone could help. (A. 57.)

Uniprop's position was that no leafleting or canvassing, even if for noncommercial purposes, was permitted within Ardmor. (A. 112.) Mr. McGaffey offered to take the flyers to Ardmor Village's office. (A. 53, 56.) APAC did not view that as an effective or acceptable method of communicating with the residents. Mr. McGaffey admitted that it was unlikely that many residents would see that information. (Id.)

Mr. McGaffey gave APAC a map of Ardmor so it could distribute its leaflets by direct mail. (A. 53, 56.) But the map did not indicate which home sites were occupied or the names of the residents at each home site. (A. 92.)

Mr. Moore and Ms. Jackson went to the Lakeville Police Department seeking help, but no help was provided because the police were unfamiliar with the law. (A. 57.) Similarly, no help was offered by the City Attorney, who stated he did not really know enough about it to comment. (Id.)

Because APAC was not allowed to leaflet, it was forced to do a mailing to the addresses on the Ardmor map. (T. 24.) Because APAC did not have a list of the residents' names, it addressed the mailing to "homeowner." At least 70 of the mailings were returned as undeliverable. (T. 26.) When APAC held its workshop after the flyering and direct mailing, the turnout was dramatically higher in the portion of Ardmor which APAC had flyered versus the section that received the mailing. (T. 26; A. 54.)

C. APAC Brings This Lawsuit Against Uniprop for Violating Minn. Stat. § 327C.13.

In response to Uniprop's actions, APAC brought this lawsuit asserting that Uniprop had violated Minn. Stat. § 327C.13. (A. 38.) APAC sought injunctive relief

seeking to restrain Uniprop from prohibiting the peaceful organizing, assembling, canvassing, leafleting or otherwise exercising of rights of free expression within Ardmor. (A. 41.) APAC also sought an award of actual damages of $519.16 which was for the additional and unnecessary expense to deliver information to residents by U.S. mail. APAC sought its attorney's fees pursuant to Minn. Stat. § 327C.15. (Id.)

D. APAC is Granted Injunctive Relief.

APAC followed up the filing of its lawsuit with a motion for temporary injunctive relief seeking an order directing Uniprop to permit APAC to enter Ardmor for leafleting, canvassing and organizing activities, subject to Minn. Stat. § 327C.13's reasonable limits as to time, place and manner. (A. 47.) Uniprop opposed the motion, claiming that Minn. Stat. § 327C.13 was unconstitutional. In the alternative, Uniprop claimed its rule prohibiting all leafleting and canvassing was a reasonable time, place and manner restriction because "APAC is free to distribute its written materials and meet face to face with Ardmor Village residents at the [Ardmor] office." Uniprop asserted such restrictions "are not only reasonable, they are relatively generous." (Uniprop Memorandum in Opposition to Defendant's Motion for Temporary Injunction, p. 7, dated March 10, 2004.) The Ardmor management office is open Tuesday through Friday from 9:00 a.m. to 5:00 p.m.; Monday from 9:00 a.m. to 7:00 p.m., and Saturday from 9:00 a.m. to 12:00 noon. (A. 113.)

The trial court, by order dated March 31, 2004, granted temporary injunctive relief. (A. 31.) Pending final resolution of this matter, the court ordered Ardmor "shall not

prevent, prohibit or otherwise interfere with [APAC] or [APAC's] employees or volunteers' peaceful leafleting, canvassing, and/or organizing residents at Ardmor Village Manufactured Home Community during the hours of 9:00 a.m. until 8:00 p.m., Monday through Saturday." (A. 35.)

E. Uniprop Changes Its Rule in Ardmor in Response to APAC's Lawsuit.

APAC thereafter sought summary judgment, asserting Ardmor violated Minn. Stat. § 327C.13, as a matter of law, when it adopted and enforced a rule prohibiting the distribution of flyers and canvassing at Ardmor Village. (A. 50.) After receipt of APAC's motion for summary judgment, Uniprop issued a new rule. (Trial Ex. 5; T. 54; A. 116.) Uniprop acknowledges the new rule was adopted in response to APAC's claims in this litigation. (T. 56.) Under its newly enacted rule, noncommercial leafleting and canvassing is permitted in Ardmor between 11:00 a.m. and 6:00 p.m. on Monday through Friday. No leafleting or canvassing is permitted after 6:00 p.m. or on weekends. (A. 116; T. 54, 60.)

The new rule also requires any person or organization engaged in noncommercial speech to visit the Ardmor management office to obtain a no contact list maintained by Ardmor management. (Id.) The idea for and imposition of a no contact list was promulgated at the corporate level of Uniprop. (T. 62-63.) The no contact list allows any resident who does not want to receive any canvassing, leaflets or door-to-door solicitations of any kind and regardless of their purpose to sign up for inclusion on the list. (T. 61-63.) Ardmor's rule, in its entirety, states:

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.

(Trial Ex. 5; A. 116.) This new rule was scheduled to take effect 60 days from August 13, 2004. (Id.)

On its face the new rule only permits leafleting and canvassing. (Trial Ex. 5; A. 116; T. 54.) Ardmor's rule allowed 35 hours for leafleting/canvassing in a week, all of which must occur between the hours of 11:00 a.m. and 6:00 p.m. Monday through Friday.

(A. 116.) In contrast, the Lakeville city ordinance allows door-to-door commercial solicitation for 77 hours in a week. (T. 66-67; A. 110.)[3] Ardmor's management was unsure if this new rule prohibits other activities such as organizing or assembling within the park. (T. 69.) According to Ardmor's management, APAC is not permitted to organize a meeting or assemble at the Ardmor community center unless sponsored by an Ardmor resident. (T. 70.)

In response to APAC's motion for summary judgment, Ardmor continued in its position that Minn. Stat. § 327C.13 is unconstitutional. In the alternative, Ardmor argued that even if the statute is constitutional, its "newly announced rule regarding door-to-door solicitation is not, as a matter of law, an unreasonable restriction on APAC's freedom of expression." It asserted that its "no contact list is no different than the 'do not call' list presently enjoying widespread use to avoid unwanted telephone calls." (Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and Permanent Injunctive Relief, p. 10, dated August 16, 2004.)

The trial court denied APAC's motion for summary judgment stating:

> There is a legitimate fact question regarding the reasonableness of the new rules in place at Ardmor Village Manufactured Home Community.

(A. 37.)

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[3] The trial court was provided information on Lakeville City Ordinance 3-13-10 and took judicial notice. (T. 50-51; A. 104.)

F. No Support for Uniprop's Rule Was Presented at Trial.

Trial was held on November 17, 2004. Although the rule at issue was promulgated at the corporate level at Uniprop, Uniprop presented no testimony from those individuals who created the rule. No testimony was presented by Uniprop as to the reason it decided to limit leafleting and canvassing to Monday through Friday between the hours of 11:00 a.m. and 6:00 p.m. Nor did it explain why it instituted the no contact list. Uniprop's response was presented by Ardmor's managers, Mr. and Mrs. McGaffey. (T. 72, 74.) Neither testified that they had any role in the rule's promulgation.

Uniprop, through the testimony of Mary McGaffey, admitted that the new rule on canvassing and leafleting was prompted by APAC's lawsuit. (T. 56.) She acknowledged that there had been no complaints that APAC's representatives had behaved in a disruptive or disorderly manner. (T. 57.) Ms. McGaffey did assert she had received complaints about APAC being in the park. (T. 56.) She, however, kept no log of those calls and did not identify who had made the calls, or provide any details as to the nature of the complaints. (T. 57.)

APAC had received a voice mail from Ms. McGaffey telling APAC not to contact residents. (T. 29.) A few months later it received another call from an unidentified caller asking APAC to stop leaving flyers on the door. (T. 29-30.) The voice sounded like that of Ms. McGaffey. (Id.) APAC has asserted that if it received a call from a resident who identified himself, and asked not to be contacted, APAC would honor the resident's request. (T. 28-29.)

Once it enacted its new rule, Uniprop had Ardmor personnel personally deliver its new rule to each resident door to door. (T. 58.) With the new policy, Uniprop provided Ardmor residents with a form by which they could add their names to the "no contact list" now being maintained by Ardmor management. (Trial Ex. 6; T. 58; A. 102.)

Every new resident who comes into the park will receive a copy of the new rule along with a sign-up sheet for the no contact list. (T. 61.) The no contact list does not make any distinction between organizations and applies to noncommercial communications as well as to commercial communications. (T. 62.) Twenty-four residents of Ardmor have signed up for the no contact list. (T. 64, 74; Trial Ex. 8; A. 103.) Mr. and Mrs. McGaffey, who jointly manage Ardmor, are charged with enforcing the rule at Ardmor. (T. 64.)

At trial, APAC explained that the new rule's time limitation on leafleting and canvassing unreasonably curtailed outreach efforts and presents an unreasonable impediment to forming a resident association. (T. 35-36.) Face-to-face contact with residents is important. (T. 33-34.) Mr. Moore explained that in order to form a resident association at Ardmor, "it's absolutely necessary that people are able to have face-to-face contact with their neighbors, or [APAC] to have face-to-face contact with the residents to explain what the residents' association is, why it's forming, what are the problems it's meant to address, ..." (T. 34.) According to Mr. Moore, if there is not this face-to-face contact, it is virtually impossible to form a residents' association. (Id.; see also T. 35-36.) In APAC's experience, allowing only Monday through Friday 11:00 a.m. to 6:00 p.m.

access was insufficient because from its experience not many residents are home during that time frame. (T. 34-35.) This limited time frame also made it virtually impossible for APAC to find volunteers to help with the flyering. (T. 35.)

Testimony was presented that prior to APAC distributing flyers at Ardmor Village, Ardmor Village was not a park from which APAC received many hotline calls. After its flyers were distributed, APAC saw a dramatic increase in the number of hotline calls. Mr. Moore testified that "especially this year, Ardmor is by far the park that we receive the most phone calls from" more than "any other park in the state." (T. 36-37.)

APAC, through its community organizer, Ned Moore, expressed concerns with regard to Ardmor's "no contact list." Of concern is that residents could be intimidated and sign the list. (T. 31-32.) Also of special concern is that the manufactured home park owner is the keeper of the list and that a park owner can tell others "don't contact these people." (T. 32.)

Uniprop presented 2 of the 24 residents who had signed the no contact list. (T. 78, 85.) Roger Moran testified that he decided not to affiliate with APAC after receiving a flyer and attending a meeting. (T. 86.) Resident Catherine Dennen also signed the no contact list. She testified that she had formerly headed a resident association at Ardmor. (T. 79, 82.) Ms. Dennen asserted that the now-defunct resident association had conferred a benefit to the Ardmor community by obtaining a new playground, collecting food for food drives and "having different parties throughout the year." (T. 83.) Ms. Dennen's health prevented her from continuing with association activity. (T. 83-84.) When

Ms. Dennen headed this organization, she notified residents of association activities by placing information in the Ardmor newsletter, which information was subject to approval by Ardmor's management. (T. 84.)

G. The Trial Court Finds New Rule Unreasonable and Extends Hours But Upholds No Contact List.

The trial court found as fact that Uniprop's new rule unreasonably curtailed APAC's outreach efforts, presents an unreasonable impediment to forming a resident association and impedes a response to any kind of crisis at Ardmor. (Finding of Fact 17; A. 10.) APAC's petition drive efforts would be seriously impacted without the ability to reach residents face-to-face during evening and/or weekend hours. (Id.) The trial court also found that no evidence was presented to indicate that any resident on the no contact list was improperly on it or was coerced into signing it. (Finding of Fact 19; A. 11.) The trial court concluded:

> - APAC has a right of free expression within Ardmor Village for noncommercial purposes pursuant to Minn. Stat. § 327C.13. Such expression includes peacefully organizing, assembling, canvassing, leafleting or otherwise exercising within the park. Minn. Stat. § 327C.13.
>
> - Ardmor violated Minn. Stat. § 327C.13 by prohibiting and adopting a rule prohibiting APAC's employees from peacefully leafleting and canvassing at Ardmor Village when Ardmor manager Douglas McGaffey prohibited said activity in April 2003 and again in June 2003.
>
> - The Court finds that Ardmor's interest in promoting the residents' "quiet and peaceful use of the community" is compelling. However, the new rule is not narrowly drawn to achieve that end. The new rule adopted on August 2,

> 2004 violates Minn. Stat. § 327C.13. The Court finds that the new rule is not reasonable, in that it would restrict APAC from being able to directly contact residents during the times in which residents are most likely to be home, i.e. on Saturdays during the day.
>
> - APAC has been injured by Ardmor's violation of Minn. Stat. § 327C.13 in the amount of $590.16 and is entitled to an injunction, costs, investigation fees and reasonable attorney's fees pursuant to Minn. Stat. § 327C.15 and § 8.31, subds. 1 and 3(a).
>
> - Minn. Stat. § 327C.13 is not unconstitutional beyond a reasonable doubt.

(A. 12.)

Based on its findings of fact and conclusions of law, the trial court ordered that canvassing/leafleting hours be allowed Monday through Saturday from 11:00 a.m. until 6:00 p.m. (A. 12-13.) No Sunday activity is permitted. (Id.)

The trial court held Ardmor was not enjoined from enforcing the no contact portion of the new rule. (A. 13.) But the trial court further ruled:

> On the first day of every other month, starting in February 2005, [Ardmor] shall provide to a party designated by [APAC] the current "no-contact" list. [Ardmor] 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, [APAC] 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.) Accordingly, the trial court has placed the burden on APAC "to monitor those numbers and take appropriate legal action." (A. 21.)

In response to the limitation of hours placed on leafleting and canvassing and its endorsement of the no contact list, APAC sought amended findings or in the alternative a new trial. (A. 48.) The trial court, in response to APAC's motion to amend, did extend the hours for canvassing and leafleting by one hour until 7:00 p.m. on Monday through Saturday for the time period of May 1 to August 30 of each year. (A. 23.) The trial court awarded APAC its attorney's fees and costs pursuant to Minn. Stat. § 327C.15 but limited its fee award to two-thirds of the total attorney's fees incurred because APAC "did not achieve all of its goals through this litigation." (A. 30.)

H. Uniprop Appealed, APAC Filed a Notice of Review, and the Court of Appeals Affirmed.

Uniprop appealed, acknowledging that if APAC was the prevailing party it was entitled to its attorney's fees pursuant to Minn. Stat. § 327C.15 and Minnesota's private attorney general statute, Minn. Stat. § 8.31, subd. 3(a). Uniprop's sole issue raised on appeal was APAC had not prevailed sufficiently at trial and therefore was not entitled to any fees. (A. 2; Appellant's Brief, p. 8, dated July 11, 2005.) APAC filed a Notice of Review challenging the trial court's interpretation and application of § 327C.13 to the facts of this case. (Id.) The Court of Appeals affirmed. (A. 1.)

The Court of Appeals acknowledged that this case presents the application of § 327C.13 to the undisputed facts of this case which is a question of law. (A. 4.) Asserting that Minn. Stat. § 327C.13 does not convert "manufactured home parks into

governmental entities," the Court of Appeals concludes that in enacting Minn. Stat. § 327C.13, the Legislature did not intend to integrate First Amendment principles into the statute. (A. 4.) The Court of Appeals holds "that the limits the district court imposed on [APAC's] access to Ardmor Village were reasonable under Minn. Stat. § 327C.13." (Id.)

APAC sought further review by this Court challenging the lower court's interpretation and application of Minn. Stat. § 327C.13 to the undisputed facts. It is APAC's position that the time limitations placed on free expression activities within Ardmor are unreasonable as a matter of law. A manufactured home park under the auspices of Minn. Stat. § 327C.13 cannot become the gatekeeper to free expression by creation and enforcement of a no contact list which requires all to present themselves to Ardmor's management before conducting free expression activities within Ardmor.

ARGUMENT

TIME LIMITATIONS PLACED ON NONCOMMERCIAL FREEDOM OF EXPRESSION ACTIVITIES WITHIN ARDMOR AND THE CREATION AND MAINTENANCE OF A NO CONTACT LIST ARE CONTRARY TO MINN. STAT. § 327C.13.

A. This Court Applies the De Novo Standard of Review.

Chapter 327C is a comprehensive chapter regulating the relationship between manufactured park owners and its residents. The Legislature, in so enacting, recognized that the owner of a manufactured home, as well as the owner of a manufactured home park, has a unique legal status. (A. 71.) The homeowner owns the home, but pays rent for the ground it sits on. The use and enjoyment of the home depends on the homeowner's ability to continue to rent someone else's land. The manufactured home

park owner therefore has an unusual status. "Not simply a private landowner or an ordinary landlord, the park owner has come to resemble a private government. . . . In short, a park owner is like an unelected mayor of a bedroom community." (Id.) Unlike a government, which is accountable to its electorate, a manufactured home park owner has no direct accountability to its residents, apart from statutory constraints. Minn. Stat. § 327C.13 is one of those statutory constraints.

Minn. Stat. § 327C.13, entitled "freedom of expression," prohibits a park owner from prohibiting or adopting any rule prohibiting residents or other persons from peacefully organizing, assembling, canvassing, leafleting or otherwise expressing within the park their rights of free expression for noncommercial purposes. The Legislature provided that a park owner may only adopt and enforce "rules that set reasonable limits as to time, place and manner."

Construction of Minn. Stat. § 327C.13 is a question of law. Application of this statute to the undisputed facts of record is also a question of law. Therefore, this Court owes no deference to the lower court's interpretation or application of the facts to the law. Boubelik v. Liberty State Bank, 553 N.W.2d 393, 402 (Minn. 1996), reh'g denied.[4]

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[4] This case came before the district court on APAC's motion for summary judgment and the case was tried following the denial of that motion. Because Uniprop's new rule was promulgated in response to APAC's pending motion for summary judgment, much of the record with regard to Uniprop's preclusion of leafleting/canvassing under the old rule was submitted at that time. While a brief historical account of the old rule was submitted at trial, the focus at trial was on the new rule. It is APAC's position that not only was it entitled to prevail at trial but on the summary judgment record.

Further, APAC does not challenge the trial court's findings of fact but challenges the court's order that follows in which it upheld the no contact list and the prohibition of leafleting, canvassing, etc., except in the limited times found permissible by the court. Whether the findings of fact support the trial court's judgment is a question of law which is also reviewed de novo. Donovan v. Dixon, 261 Minn. 455, 113 N.W.2d 432, 435 (1962).

B. Minn. Stat. § 327C.13 Must Be Interpreted in Light of Basic First Amendment Principles.

1. The trial court's ruling.

At issue in this case is the construction of a statute that was enacted to insure that residents of manufactured home communities' basic constitutional rights of freedom of expression would not be abridged by manufactured home park owners. The lower courts' rulings limiting free expression within Ardmor apply to all who seek to exercise basic First Amendment rights within Ardmor. The restrictions imposed by Uniprop affect not only organizations like APAC, but also the candidate with a door-to-door campaign for political office, the Jehovah's Witness who canvasses about his religious beliefs, and the environmental activist who opposes construction of a landfill nearby. It would extend to residents casually soliciting the votes of neighbors.

If the trial court's ruling is allowed to stand, no person or organization is allowed to even leave leaflets outside an Ardmor resident's door before 11:00 a.m. or after 6:00 p.m. from September 1 to April 30 and after 7:00 p.m. from May 1 to August 30. No Sunday activity is permitted at any time. Moreover, all must present themselves to the

Ardmor management office prior to conducting free expression activities even during the limited time available because of the no contact list maintained and enforced by Uniprop.

In setting the time limitations, the trial court reasoned as follows:

> Most people who work during the weekday are likely to be home at some point between those hours on Saturdays. The other option would be for the Court to order an expansion of the time on weekdays to, say, 8:00 p.m. The problem with that is that 8:00 p.m. is well after nightfall for a good part of the year in Minnesota. It would conceivably be more difficult for the management of Ardmor Village to monitor the comings and goings of "strangers" and assure a safe environment for residents after dark. It also seems more likely that residents will be more annoyed by late evening visitors than they would be by visitors on Saturdays. The Court sees no need to expand the time, as requested by Plaintiffs, to Sundays, as most of the residents should be able to be contacted during the hours the Court is permitting. The Statute requires reasonableness, not perfection.

(A. 21.) As to the no contact list, the trial court simply found there was no evidence that any resident on that list was coerced to sign it. (A. 11.) The trial court failed to consider the impact generally on the residents and others of allowing Uniprop to enforce and maintain a no contact list. It is APAC's position that the time constraints imposed are not reasonable as a matter of law. The no contact list is contrary to Minn. Stat. § 327C.13 and cannot be considered a reasonable limitation on free expression that may be maintained by a park owner.

C. Reasonable Time, Place and Manner Are Terms of Art and Must Be Applied as Interpreted in First Amendment Cases.

1. Reasonable time, place and manner describes limitations placed on governmental entities in regulating First Amendment rights.

Reasonable time, place and manner are not defined terms in Minn. Stat. § 327C. However, these terms are terms of art and have been utilized by the United States Supreme Court and this Court in describing the extent that free expression can be regulated by a governmental entity consistent with First Amendment principles. At the time of Minn. Stat. § 327C.13's enactment, there had been numerous judicial decisions discussing free expression, that governmental regulation of free expression must be a reasonable time, place and manner regulation and a framework for making this determination of reasonableness. Koppinger v. City of Fairmont, 311 Minn. 186, 248 N.W.2d 708, 712 (1976); International Soc. for Krishna Consciousness, Inc. v. Heffron, 299 N.W.2d 79 (Minn. 1980), reversed Heffron v. International Soc. for Krishna Consciousness, 452 U.S. 640 (1981).

2. Legislature's concern was park owner control over free expression.

In Marsh v. Alabama, 326 U.S. 501 (1946), a company-owned town sought to ban the distribution of literature of Jehovah's Witnesses. As Justice Black explained, ownership does not always mean absolute dominion.

> In our view the circumstances that the property rights to the premises where the deprivation of liberty, here involved, took place, were held by others than the public, is not sufficient to justify the state's permitting a corporation to govern a community of citizens so as to restrict their fundamental

> liberties and the enforcement of such restraint by the application of a State statute.

Id. at 509.

The Legislature's obvious concern leading to its enactment of Minn. Stat. § 327C.13 was that a park owner may view itself as having the ability to control freedom of expression within its park's confines and not be subject to the reasonable time, place and manner restrictions placed on municipalities. (A. 72.) As Senator Merriam stated in his 1982 memorandum detailing the legislative background of Chapter 327C:

> The legislature first recognized the special nature of manufactured home parks in 1973 and created a special law to govern landlord-tenant relations in those parks. In 1979, the legislature heard lengthy testimony which documented major abuses of power occurring through this form of private government. Responding to that testimony, the legislature substantially amended the special landlord-tenant law.

(A. 72.) Senator Merriam explained that the 1982 amendments grew out of an interim study conducted by the House Subcommittee on Housing. (A. 73.)

> That interim study, suggested jointly by the Attorney General's Office and the Minnesota Manufactured Housing Association, included five hearings around the state in Blaine, Rosemount, St. Peter, Thief River Falls and Duluth. Five hundred citizens attended in Blaine; 300 in Rosemount. The particular provisions of the legislation reflect the concern voiced by citizens in more than 15 hours of public testimony.

(A. 73.)

Arising out of the 1982 amendments is Minn. Stat. § 327C.13. Minn. Stat. § 327C.13 is remedial legislation. As a remedial statute, it is entitled to liberal construction to promote, not to frustrate, its objectives. Miller v. Color Tyme, Inc., 518

N.W.2d 544, 548 (Minn. 1994). By its enactment of § 327C.13, the Minnesota Legislature made clear that a manufactured home property owner cannot grant a tenancy to a lessee and yet maintain absolute control over speech that takes place on the property. By leasing land to a resident, that resident has a legal right to the enjoyment of that property free from undue park owner interference.

By subjecting such free expression to only reasonable time, place and manner restrictions, that resident has the right to exercise free speech and to receive communications from others just as a homeowner would have such a right in a traditional city neighborhood. See, e.g., State v. Kolcz, 276 A.2d 595, 599 (N.J. Super. 1971) (holding that decisions relating to time, place and manner limitation of free expression on municipalities are equally applicable to Rossmor community, a planned resident village); The Guttenberg Taxpayers and Rentpayers Ass'n v. Galaxy Towers Condominium Ass'n., 688 A.2d 156, 158 (N.J. Super. 1996) ("A level playing field requires equal access to this condominium because it has become in essence a political 'company town' . . . in which political access controlled by the Association is the only 'game in town.'"). Minnesota's Attorney General, in its publication "The Manufactured Home Parks Handbook," acknowledges that purpose by explaining that a park owner "just like a municipality" may set reasonable limits on freedom of expression. (A. 140.)[5]

[5] The Handbook is located at www.ag.state.mn.us. For the Court's convenience, a copy is included in APAC's Appendix at A. 130.

3. Court of Appeals' rejection of First Amendment principles resulted in no reasoned analysis.

Despite the language used in § 327C.13 and its title "freedom of expression," the Court of Appeals holds that First Amendment jurisprudence construing "reasonable limits as to time, place and manner" has no bearing on the application and construction of § 327C.13 generally or in this case. (A. 4.) In so ruling, the Court of Appeals incorrectly rejected the presumption that when words have been given a well-defined meaning by the courts, it is presumed that they have the same meaning in a statute subsequently enacted. Minnesota & Pacific Railroad Co. v. H.H. Sibley, 2 Minn. 13, 2 Gil. 1 (Minn. 1858) ("when terms of art or peculiar phrases are used, it must be supposed they are used in the sense as understood by persons familiar and acquainted with such terms."); Morissette v. U.S., 342 U.S. 246, 263 (1952) (where legislature borrows terms of art it presumably knows and adopts the cluster of ideas that were attached by the judiciary to the borrowed words).

In other words, the interpretation of well-defined words and phrases in the common law carries over to statutes dealing with the same or similar subject matter. Minn. Stat. § 645.17, subd. 4; Minnesota Wood Specialties, Inc. v. Mattson, 274 N.W.2d 116, 119 (Minn. 1978) ("words and phrases which have acquired an established meaning by judicial construction are deemed used in the same sense in a subsequent statute relating to the same subject matter"); Gilbert v. U.S., 370 U.S. 650, 655 (1962) ("[I]n the absence of anything to the contrary, it is fair to assume that Congress use[s] [a] word in [a] statute in its common law sense"); Roadway Express, Inc. v. Piper, 447 U.S. 752, 759

(1980) (in construing a word in a statute "we may look to the contemporaneous understanding of the term"). See also 2 B. Sutherland, Statutory Construction § 50:3 (6th ed. 2005).

What is striking about the Court of Appeals decision is that by rejecting analysis of reasonable time, place and manner under guiding First Amendment principles, it effectively provides no framework for analysis. (A. 4-5.) The Court of Appeals simply states that § 327C.13 "does not require that limitations on noncommercial speech in manufactured home parks be the least restrictive limitations available" and then concludes the district court imposed limits "were reasonable." (Id.) The Court of Appeals offers no reasoned analysis as to why that is so. Contrary to the Court of Appeals' ruling, to interpret and apply § 327C.13 it is necessary for the Court to look to the courts' construction of reasonable time, place and manner in the First Amendment cases. Applying reasonableness as enunciated in that context, the trial court's holding must be reversed.

D. At Issue Is Entitlement to the Exercise of Basic First Amendment Rights.

1. Leafleting and canvassing are classic forms of speech that lie at the heart of the First Amendment.

Uniprop placed severe hour restrictions on canvassing and distribution of leaflets in Ardmor. "Courts have traditionally afforded the highest level of First Amendment protection to individuals or groups actively involved in handing out pamphlets or conducting canvassing." New Jersey Environmental Federation v. Wayne Township, 310

F. Supp.2d 681, 690 (D.N.J. 2004). The United States Supreme Court in Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 536 U.S. 150, 160-65 (2002), discusses extensively the importance of door-to-door canvassing and pamphleteering as vehicles for the dissemination of ideas. "[P]etition circulation . . . is 'core political speech' because it involves "interactive communication concerning political change." Buckley v. American Constitutional Law Foundation, Inc., 525 U.S. 182, 186 (1999). In striking down a Colorado statute that prohibited paying petition circulators, the Supreme Court explained:

> The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change. . . . Thus, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as "core political speech."

Meyer v. Grant, 486 U.S. 414, 421-22 (1988).

Just as circulating a petition is core political speech under the First Amendment, distributing leaflets and distributing handouts are classic forms of speech that "lie at the heart of the First Amendment." Schenck v. Pro-Choice Network of Western New York, 519 U.S. 357, 377 (1997). In McIntyre v. Ohio Elections Commission, the United States Supreme Court stated that "handing out leaflets in the advocacy of a politically controversial viewpoint is the essence of First Amendment expression." 514 U.S. 334, 347 (1995), citing International Soc. for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672 (1992). Similarly, the United States Supreme Court acknowledged the historical importance of leaflets when it wrote, "[leaflets] have been historic weapons in the defense

of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest." Lovell v. City of Griffin, Georgia, 303 U.S. 444, 452 (1938).

While the First Amendment is commonly thought of as protecting the rights of speakers, it also protects the right of people to receive information, particularly information distributed by others. Martin v. City of Struthers, 319 U.S. 141, 143 (1943) (stating that the First Amendment "embraces the right to distribute literature, and necessarily protects the right to receive it"). The United States Supreme Court has held that the First Amendment prohibits cities from banning the distribution of handbills, leaflets, circulars and papers in the street or from house to house. Schneider v. New Jersey, 308 U.S. 147, 163-64 (1939); Martin, 319 U.S. at 149. In Martin, the Supreme Court concluded:

> Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas.

Id. at 146-47. Indeed, under the Supreme Court's ruling in Martin, a majority of a town's residents may not use majoritarian political processes to keep solicitors from distributing information to a minority of citizens who wish to receive it. Id. at 148 (stating that "the decision as to whether distributors of literature may lawfully call at a home" properly belongs "with the homeowner himself" and not to the municipality).

Noncommercial door-to-door solicitation is entitled to this special solicitude because it is much less expensive than alternative forms of communication. See Members of City Council of City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 812, n.30 (1984) ("door-to-door distribution of circulars is essential to the poorly financed causes of little people").

2. Criteria have been developed in determining whether restrictions regulating time, place and manner are reasonable.

Cities may, however, adopt reasonable restrictions regulating the time, place or manner of expression. Clark v. Community for Creative Nonviolence, 468 U.S. 288, 293 (1984). The restrictions are valid if they do not refer to the content of the speech, are narrowly tailored to serve a significant government interest, and leave open alternative methods of communication. Id. If even one prong of this three-part test is not met, the restriction cannot stand. Grossman v. City of Portland, 33 F.3d 1200, 1205 (9th Cir. 1994); Community for Creative Non-Violence v. Turner, 893 F.2d 1387, 1392 (D.C. Cir. 1990).

3. Uniprop had the burden of proving reasonableness.

Ordinarily, when a statute or other governmental action is alleged to infringe on the exercise of First Amendment rights, the state or municipality bears the burden of demonstrating the constitutionality of the action. See Organization for a Better Austin v. Keefe, 402 U.S. 415, 419 (1971). Lim v. City of Long Beach, 217 F.3d 1050, 1054 (9th Cir. 2000) ("Traditionally and logically . . . the party seeking to restrict protected speech has the burden of justifying the restriction."). Accordingly, it is APAC's position that it is

the manufactured home park that has the burden of showing that its rule is a valid time place and manner regulation. This it did not do. The restrictions imposed cannot stand because they are not narrowly tailored and do not leave open ample alternate methods of communication.

E. The Restrictions as Imposed by Uniprop and the Trial Court Are Not Narrowly Tailored to Serve a Park Owner's Legitimate Content-Neutral Interest.

1. Federal case law does not support the lower court's holding.

The scope of regulation of protected First Amendment activity designed to serve a substantial governmental interest must be "no greater than is essential to the furtherance of that interest." U.S. v. O'Brien, 391 U.S. 367, 377 (1968). With respect to temporal restrictions on door-to-door canvassing and solicitation, the majority of courts have held that regulations which fail to permit sufficient evening and weekend activity are not sufficiently tailored to serve the governmental interests advanced for such restrictions. Common to these decisions are two holdings: (1) early curfews and limited weekend hours on canvassing by political and civic organizations serve no sufficient governmental purpose and (2) for grassroots organizations such as APAC there is no meaningful alternative.

In Association of Community Organizations for Reform Now v. City of Frontenac, 714 F.2d 813, 815 (8th Cir. 1983), the Eighth Circuit reversed a judgment upholding the constitutionality of an ordinance which prohibited solicitation between the hours of 6:00 p.m. and 9:00 a.m. and Sundays, stating:

> Although we find that Frontenac's asserted objections are legitimate, we hold that the regulation in issue here is not sufficiently tailored so as to avoid conflict with the plaintiff's First Amendment freedoms. Since constitutional principles require that the regulation be narrowly drawn to further the legitimate governmental objective, the proponent of the regulation must demonstrate that the government's objectives will not be served sufficiently by means less restrictive of First Amendment freedoms. . . . In this case there is no showing than any of several less restrictive alternatives would not meet the government's objectives.

Id. at 818. The Eighth Circuit was not persuaded by Frontenac's argument that the ordinance was valid since it allowed ACORN and others to solicit at alternative times, namely from 9:00 a.m. to 6:00 p.m. Monday through Saturday. See also Pennsylvania Public Interest Coalition v. York Township, 569 F. Supp. 1398, 1402-03 (D.C. Pa. 1983) (invalidating ordinance banning home solicitation between the hours of 6:00 p.m. and 9:00 a.m.); Citizens for a Better Environment v. Village of Olympia Fields, 511 F. Supp. 104, 106-08 (N.D. Ill. 1980) (invalidating various ordinances which restricted canvassing and solicitation to the hours of 9:00 a.m. to some hour between 4:00 p.m. to 6:00 p.m. or until "sunset"); Connecticut Citizens Action Group v. Town of Southington, 508 F. Supp. 43, 45-47 (D. Conn. 1980) (invalidating ordinance which restricted canvassing and solicitation to the hours of 8:00 a.m. to 6:00 p.m.); Alternatives for California Women, Inc. v. County of Contra Costa, 193 Cal. Rptr. 384, 392-93 (Cal. App. 1983) (invalidating county ordinance which prohibited solicitation between "sunset and sunrise"); Massachusetts Fair Share, Inc. v. Town of Rockland, 610 F. Supp. 682 (D.C. Mass. 1985) (invalidating ordinance which prohibited soliciting after sunset and after daylight hours);

Wisconsin Action Coalition v. City of Kenosha, 767 F.2d 1248 (7th Cir. 1985) (antisolicitation barring door-to-door canvassing for charitable and political causes between hours of 8:00 p.m. and 9:00 p.m. violated First Amendment).

Similarly, the Seventh Circuit in City of Watseka v. Illinois Public Action Council, 796 F.2d 1547 (7th Cir. 1986), aff'd 479 U.S. 1048 (1987), reh'g denied, 480 U.S. 926 (1987), held invalid an ordinance that made it unlawful to solicit prior to 9:00 a.m. or after 5:00 p.m. on any weekday or at any time on a Sunday or on a state or national holiday. The ordinance, in addition, provided that residents could forbid solicitation of their residence by posting a sign. Id. at 1549. The Seventh Circuit held the time limits could not be validly sustained under time, place and manner restrictions. Id. at 1552.

The Seventh Circuit recognized that the Watseka ordinance was a comprehensive attempt by the city to deal with the problems which the city perceived as arising from door to door solicitation. Id. at 1554. To support its contentions, Watseka submitted a copy of the ordinance and several affidavits. The preamble to the ordinance stated "that the city council had received complaints about solicitors and found it necessary to pass the ordinance." Id. Also submitted was the affidavit of the city's mayor, alleging that he was aware of problems with solicitors who operated at night when the city offices were closed. Id. at 1555. Further testimony was presented that several senior citizens (who were not identified) had expressed fear over strangers coming to their doors at night. Also presented were affidavits of three people involved in law enforcement, including the retired police chief, testifying that the incidents of crime are greater after dark. Id.

The Seventh Circuit examined the nighttime ban and concluded it was not sufficiently connected to Watseka's interest in preventing crime. Id. Watseka failed to in any way link the evidence on nighttime crime to solicitation. Id. at 1555-56. The Seventh Circuit further explained:

> Finally, Watseka failed to offer any evidence to substantiate its claim that the ordinance lessened the burden on its police force which it claimed unregulated soliciting caused. Watseka failed to offer any explanation why the people who came within the ordinance's definition of solicitating posed any greater burden on the police, or threat of crime, than the numerous other visiting strangers that the ordinance did not purport to cover. Someone with an illegitimate intent has options besides posing as a solicitor. Common ones, for example, are the pretense of looking for someone at the wrong address, the need for emergency use of the telephone, or a claim that entrance is needed to check for gas leaks, and so forth. Unfortunately, for the devious, there is no shortage of opportunities.

Id. at 1556.

Watseka "also failed to back up its assertion that the ordinance prevented fraud and embezzlement." Id. The Seventh Circuit concluded that darkness "can have little to do with the fraudulent sale of merchandise." Id. The court could find "no evidence of relationship between Watseka's prevention of crime objective and the 5 p.m. to 9 p.m. ban on solicitation." Id.

The Seventh Circuit also concluded that Watseka failed to prove a significant relationship between protecting the quiet enjoyment and peace of its residents and the 5:00 p.m. to 9:00 p.m. ban. Id. The Seventh Circuit pointed to another provision of the ordinance which allowed Watseka residents to protect themselves from all solicitors at all

times simply by posting signs. Id. The Seventh Circuit concluded "the 5 p.m. to 9 p.m. ban is essentially an attempt by Watseka to substitute its judgment for that of its citizens." Id. The Seventh Circuit explained:

> A resident who does not want to be disturbed during dinner but is willing to talk to canvassers thereafter can post the sign during dinner and take it down once the table is cleared. Watseka can prosecute any solicitor who disturbs a resident posting a no solicitation sign. The only additional effect of the citywide 5 p.m. to 9 p.m. ban is to deprive willing listeners of the canvassers' message. . . . The ban is not sufficiently related to Watseka's legitimate objective of protecting its citizens' peace and quiet enjoyment of their homes.

Id. at 1557. The Seventh Circuit continued:

> In granting First Amendment protection to door-to-door solicitation and canvassing, the Supreme Court has implicitly recognized that door-to-door communication has a special significance not duplicated by less personal forms of contact. Because Watseka has prohibited IPAC from soliciting during the hours when solicitation is most effective, and has failed to offer evidence that the alternatives left open to IPAC are ample and adequate, the ordinance is unconstitutional.

Id. at 1558.

In Weinberg v. City of Chicago, 310 F.3d 1029 (7th Cir. 2002), reh'g en banc denied, cert. denied, 540 U.S. 817 (2003), the Seventh Circuit reaffirmed its earlier holding in Watseka. Weinberg arose out of a dispute over the right of an author, Mark Weinberg, to sell copies of a book he had written critical of the owner of the Chicago Black Hawks. Weinberg sought to sell copies of his book on the public sidewalks outside

the United Center where the Chicago Bulls and Chicago Black Hawks play. Id. at 1033-34.

Chicago police officers informed Weinberg that he must stop selling his book outside the United Center, explaining that he was in violation of the city's peddling ordinance, which prohibited the peddling of merchandise within 1,000 feet of the United Center. Id. at 1034. The Chicago City Council enacted the ordinance to alleviate traffic congestion and maintain pedestrian safety around the United Center. It also enacted similar restrictions around other large stadiums throughout Chicago. Id.

The city argued that because there is heavy traffic around the United Center, safety concerns justified the ordinance. Id. at 1038. On its face, the Seventh Circuit held that contention was hard to dispute. However, the Seventh Circuit admonished "First Amendment rights demand more than mere facial assertions." Id. It was true, the court conceded, the government may rely upon its own "real world experience" in enacting regulations. But the city, the court stated, "cannot blindly invoke safety and congestion concerns without more."[6] Id.

Without proof to back up its assertions, the government could cite safety concerns as its sole reason for banning all peddling on all sidewalks, since the potential always exists for crowding or congestion. Id. Although the city had presented self-serving

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[6] The Seventh Circuit did conclude that the ordinance was content-neutral. Id. at 1037. Here, however, Ardmor has admitted, the "new" rule was enacted in direct response to APAC's litigation. Accordingly, a question is raised as to whether the rule in question here is content-neutral.

testimony from police officers and security officials familiar with the United Center and its environs to the effect that the peddling of merchandise created congestion and that enforcement of the ordinance essentially eliminated the traffic problems, this testimony conflicted with a videotape, shot at the request of the district court, of Weinberg selling his book outside the United Center, which showed no interference with any pedestrian traffic nor any congestion along the sidewalk. Id.

In reaching its judgment, the Seventh Circuit relied on its prior ruling in Watseka to "offer guidance on the question of what constitutes sufficient evidence to prove the government's interest." Id. The Seventh Circuit noted that in Watseka, the court struck down an ordinance restricting solicitation for, among other reasons, lack of evidence supporting the city's substantial interests. The city had only offered the self-serving testimony of the mayor. The court held that such "a conclusory assertion by an interested party, particularly when unsupported by any statistics or firsthand knowledge of any actual crimes, lends little if any support" to the claim. The court in Weinberg found the same infirmity in the proof. Id. at 1039.

The City of Chicago had provided no objective evidence that traffic flow on the sidewalk or street was disrupted when Mr. Weinberg sold his book. Id. "The City offered no empirical studies, no police records, no reported injuries, nor evidence of any lawsuits filed." Id. "Using a speech restrictive blanket with little or no factual justification flies in the face of preserving one of our most cherished rights." Id. The only evidence the City offered was based on speculation as to what might happen if

booksellers could sell their books and the cumulative effect this might have on pedestrian traffic. Id. Moreover, the court observed there was no evidence that Weinberg, or any peddler for that matter, posed a threat to the safety and free flow of traffic surrounding the United Center. Id. All this, the court held, was problematic; "we have never accepted mere conjecture as adequate to carry a First Amendment burden." Id. The Seventh Circuit concluded the peddling ordinance was not a reasonable time, place and manner restriction. Id. at 1042.

Likewise, the Third Circuit in New Jersey Citizen Action v. Edison Township, 797 F.2d 1250 (3d Cir. 1986), cert. denied, 479 U.S. 1103 (1987), held that provisions of ordinances, proscribing noncommercial door to door canvassing and solicitation during evening hours, generally after 5:00 p.m. or 6:00 p.m. or sunset, violated free speech rights. Id. at 1258. The Third Circuit concluded that defendant municipalities "cannot constitutionally forbid plaintiffs from engaging in canvassing and solicitation before 9:00 p.m., the time period challenged in this case." Id. at 1266.

In Association of Community Organizations for Reform Now v. City of Deerborn, 696 F. Supp. 268, 274 (E.D. Mich. 1988), the federal district court, in recognizing the importance of the door-to-door canvass to contemporary political organizations, held the courts must be sensitive to the practical realities confronting such operations. The court stated:

> Clearly, canvassing operations can only practically operate in the late afternoon and evening. Their most effective hours tend to be between 7:00 p.m. and 9:00 p.m., when most people are home from work and finished with dinner. . . . To

> bar canvassing between these hours would be to cut the heart out of the operation and call the viability of the entire effort into serious question.

Id.

The court also recognized that the majority of other courts which have considered the question have held that the impact of canvassing on the crime rate is inadequate to justify prohibitions on canvassing before 9:00 p.m. Id. at 274 and citations to other authorities.

Most recently, the federal district court upheld a Federal Trade Commission regulation which had imposed restrictions upon activities of professional telemarketers that solicited charitable contributions on behalf of nonprofit organizations. That regulation prohibits solicitors from placing calls before 8:00 a.m. or after 9:00 p.m. 16 C.F.R. § 310.4(c) (West 2006). Upholding this regulation, the federal district court held that this rule leaves a significant amount of time – 13 hours a day – when calls are permitted. "In fact, the window for permissible calling includes the dinner hour, a time when families are quite likely to be home." National Federation of the Blind v. F.T.C., 420 F.3d 331, 341 (4th Cir. 2005).

In upholding the Federal Trade Commission rule, the court noted that the goal behind the time restraints is not to prevent fraud "but to allow family life to proceed undisturbed by phone calls in the evening and early morning hours." Id. at 339. Finding the regulation of prohibiting calls before 8:00 a.m. or after 9:00 p.m. narrowly drawn, the court explained:

> After 9:00 p.m., family members might, for example, be cleaning house for the night, bathing, paying bills, discussing homework, planning this or that, reading, and watching TV or simply getting ready to turn in. Before 8:00 a.m. they might be eating breakfast, dressing, shaving or fixing lunch for spouses or kids. The First Amendment does not require us to interrupt these family moments, and the only burdens on speech imposed by the TSR time restrictions protect just the most personal hours of a family's day.

Id. at 341.

F. Uniprop Presented No Evidence to Support Its Time Limitations and the Record Does Not Otherwise Support.

1. The record does not support the time limitations.

Since Uniprop restricted speech, it bears the burden of proving that its limitations are enforceable. U.S. v. Playboy Entertainment Group, Inc., 529 U.S. 803, 816 (2000). Uniprop presented no evidence to support its rule. Uniprop did not provide any purported proof of what stated interests motivated its rule or how its rule was narrowly tailored to those interests. Uniprop never explained why it should be entitled, with its evening and weekend restrictions, to intrude on Ardmor residents' right "to engage in a free exchange of ideas on topics of social and political import." Frontenac, 714 F.2d at 820.

The trial court in its conclusion of law states: "The Court finds that Ardmor's interest in promoting the residents' quiet and peaceful use of the community is compelling." (A. 12.) But there was no evidence presented at trial demonstrating that the residents' quiet and peaceful enjoyment of the community was threatened, let alone that was the reason for Uniprop's rule. As previously set out in detail, the federal courts have struck down time limitations, such as put in place here, finding such time bans to be

essentially an attempt by a governmental entity to substitute its judgment for that of its citizens. Here Uniprop, which answers to no electorate, has sought to substitute its judgment for that of its residents. It was exactly to curb such abuses of power that § 327C.13 was enacted.

There is no evidence in this record that door-to-door canvassing will result in or has resulted in any significant invasion of privacy. The rule in place also sweeps too broadly because the dangers of door-to-door canvassing can easily be controlled by the householder deciding whether to receive visitors. Watchtower Bible, 536 U.S. at 168-69 (stating that provision facilitating resident's own utilization of "no solicitation" signs was less restrictive than permit requirement and sufficient to further privacy interest). In Martin v. City of Struthers, the United States Supreme Court held that any interest in residential privacy did not outweigh the right of door-to-door pamphleteers largely on the grounds that the householder should make the choice of whether to listen to the pamphleteer's message or not. 319 U.S. at 147-48. The trial court's assertion that it seems more likely that "residents will be more annoyed by late evening visitors" does not justify abridgement of free expression within Ardmor. (A. 21.) The resident's right to not answer his or her door provides privacy to the unwilling listener.

Uniprop also presented no evidence that such restrictions were enacted because of any safety concerns for its residents. In fact, Uniprop expressly does not provide "any security service" for its residents. (A. 126.) Security is, according to Uniprop, "the Resident's sole responsibility." (Id.) Nonetheless, the trial court held:

> The other option would be for the Court to order an expansion of the time on weekdays to, say, 8:00 p.m. The problem with that is that 8:00 p.m. is well after nightfall for a good part of the year in Minnesota. It would conceivably be more difficult for the management of Ardmor Village to monitor the comings and goings of "strangers" and assure a safe environment for residents after dark.

The undisputed fact is Uniprop did not monitor the "comings and goings of strangers" nor did it "assure a safe environment after dark." (A. 126.) Safety of its residents was certainly not the motivating factor behind Uniprop's rule.

When APAC challenged the trial court's ruling post-trial asserting that no factual basis exists for the trial court's statements as to safety and privacy concerns (and they are in fact contrary to the record), the trial court did make a minor modification to allow longer canvassing and leafleting in late spring and summer. The trial court acknowledged post-trial that there was no testimony presented to support its stated reason for imposing its time restrictions on safety or privacy concerns but that it was simply "common sense." (T. 2/14/05, p. 6-7.) The trial court's version of "common sense" has been rejected by the courts across the country and APAC respectfully requests it be rejected here.

The restrictions as initially drawn by Uniprop and as amended by the trial court are not narrowly drawn to promote the free exchange of ideas between residents and others but to curtail such activities. The federal courts have held that communication between a homeowner and others 13 hours a day is narrowly drawn and reasonable. Here the trial court has allowed such communications for a mere 7 hours a day, with most of that time occurring when Ardmor residents are at work. In addition, a total of only 7 hours is

permitted for the entire weekend. The lower courts and Uniprop have prohibited any Sunday leafleting and canvassing. On its face, the time restrictions imposed are not narrowly drawn and therefore are not reasonable.[7]

2. There are no alternative means of communication which obviate the need for sufficient time to canvass and leaflet.

There are no alternative means of communication which obviate the need for allowing extensive time periods for leafleting and door-to-door canvassing. An organization, such as APAC, cannot use other means to convey its message. First, there is the problem of immediacy: while door-to-door canvassers can seek out their targets, disseminators of information, for example, on the Internet must depend on the initiative of individuals who might look for their messages. Even assuming that manufactured home park residents did decide to search the Internet for information, there is no guarantee they would find it. Even if they did find it, they could not engage in a dialogue with the speaker the way they could with someone who is at their doorway.

Apart from the resident's reluctance to seek out information, the Internet and other modes of communication are simply not feasible. Mass mailings, mass callings, and television and radio ads are no less problematic in this regard. Indeed, poorly financed groups – such as APAC – are unable to afford means of communication other than in-person face-to-face communication. Not only are mailings prohibitively expensive, they

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[7] The lower courts also fail to distinguish between canvassing and leafleting. It defies common sense that one cannot even leave a pamphlet at someone's door other than in the limited hours imposed in this case.

are not as effective. (T. 26; A. 54.) As the United States Supreme Court has held, there is no substitute for face-to-face communication. Martin, 319 U.S. at 146-47.

Based on this record, APAC requests that this Court hold that free expression activities such as leafleting and canvassing may be conducted in Ardmor between 8:00 a.m. and 9:00 p.m., seven days a week.

G. Uniprop's Imposition of a No Contact List Is Contrary to Minn. Stat. § 327C.13.

Not only did Uniprop place severe time limitations on free expression activities within Ardmor, it also created a no contact list. Such a rule is contrary to Minn. Stat. § 327C.13.

The no contact list was not instituted because of resident request. Instead, it was enacted by Uniprop in direct response to this lawsuit. The no contact list is only available at the Ardmor community office and per Uniprop rule "must be reviewed by all individuals prior to any leafleting, canvassing or door-to-door solicitation in the Ardmor Village community." (A. 116.) (Emphasis added.) Accordingly, Uniprop now requires residents to present themselves to the Ardmor management office in advance of going door to door to their neighbors. It requires Girl Scouts as well as Halloween trick-or-treaters to present themselves to Ardmor management. It extends to residents seeking to enlist a neighbor's support for a project. The no contact list places further restrictions on free expression activities because of the limited hours the management office is open – i.e., Monday from 9:00 a.m. to 7:00 p.m.; Tuesday-Friday from 9:00 a.m. to 5:00 p.m.,

and Saturday from 9:00 a.m. to 12:00 noon. (A. 113.) The office hours notably do not correspond with the hours the lower courts have held available for leafleting/canvassing.

The trial court allowed Uniprop's "no contact list" to remain in place solely because it found no evidence that a resident was coerced into signing it. (Finding of Fact 19; A. 11.) It then put the burden solely on APAC to monitor the number of residents who sign up for the list and to take future appropriate legal action. (A. 13.) The trial court cites no law by which the trial court upholds the no contact list and then puts the onus of monitoring on a nonprofit organization which challenges its existence. The trial court, other than finding no evidence that a resident was coerced to sign it, failed to consider the existence of such a list's ultimate impact on free expression within Ardmor. It simply ignored the fact that no one can leaflet or canvass within Armor without first presenting themselves and obtaining a list maintained by Uniprop and available only in Ardmor's management office.

1. The no contact list rule is contrary to Minn. Stat. § 327C.13.

A no contact list on its face is contrary to Minn. Stat. § 327C.13. Its purpose is to install a prior restraint of all free expression activities for those who sign it and is flatly prohibited by § 327C.13.

There is simply no reason for a manufactured home park to interject itself and put itself between residents and those persons and organizations who wish to speak to its residents. The very purpose of Minn. Stat. § 327C is to curb potential abuses of power by a park owner. Minn. Stat. § 327C.13 prohibits a park owner from adopting any rule

prohibiting residents or other persons from canvassing or leafleting. On its face, a no contact list is contrary to Minn. Stat. § 327C.13. Each resident can make the choice for themself by placing a sign or not answering the door. The no contact list takes away the power from the resident and places it solely in the hands of the park owner.

2. The no contact list rule is not a reasonable rule.

The requirement that anyone who wishes to leaflet or canvass must obtain the no contact list is simply not narrowly tailored to serve any legitimate interest of Uniprop. On that ground it is not a reasonable rule.

First, by virtue of the requirement that the canvasser obtain the no contact list, the rule requires any person desiring to engage in any type of door-to-door activity to inform the Ardmor management of his or her desire to engage in such activity. As explained by the United States Supreme Court, "the mere fact that the ordinance covers so much speech raises constitutional concerns. It is offensive – not only to the values protected by the First Amendment, but to the very notion of a free society – that in the context of everyday public discourse a citizen must first inform the government of [his/her] desire to speak to [his/her] neighbors." Watchtower Bible, 536 U.S. at 165-66. Uniprop's rule is not reasonable because it requires everyone to check in with Ardmor management before engaging in free expression activities.

Second, by requiring a canvasser/leafleter to obtain the no contact list, the rule precludes anonymous political speech because a canvasser/leafleter would likely be required to reveal his or her identity in requesting the list. Such a requirement has raised

constitutional concerns because anonymous political speech is constitutionally protected. Id. at 166.

Third, the broad language of the rule bans spontaneous speech because one is required to first obtain the no contact list prior to engaging in any type of door-to-door speech. Id. Simply put, the rule would prevent an Ardmor resident from speaking to his or her neighbor on a whole host of matters.

Fourth, the rule is not narrowly tailored to protect a legitimate interest of the manufactured home park. A resident can achieve the same goal by simply posting a "no soliciting" sign in the window of their home or not answering the door. In Watchtower Bible, the U.S. Supreme Court noted that a resident's ability to post a "no soliciting" sign in the window of their home provides "ample protection [to a resident's privacy]." Watchtower Bible, 536 U.S. at 152. Given this readily available alternative which is controlled solely by the resident, the no contact list is unnecessary.

"Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone . . ." National Ass'n for Advancement of Colored People v. Button, 371 U.S. 415, 438 (1963). Of great concern is the possibility of coercion by Uniprop and the degree of understanding by the residents as to level and amount of expression they are giving away by the signing of such a list. One would venture a guess that residents are not aware that by signing such a list they are precluding Halloween trick-or-treaters or Christmas carolers from their door. Moreover, Ardmor management, not the individual resident, becomes the enforcer. It remains to be seen

whether Ardmor management would treat APAC and Halloween trick-or-treaters the same in enforcing its no contact list. Yet, by its terms, both are precluded. Selective enforcement by Ardmor management cannot be permitted if the no contact list is upheld. (A. 102.) Uniprop answers to no electorate and to allow Uniprop to assume the role of enforcer is contrary to Minn. Stat. § 327C.13.

The trial court obviously recognized the inherent problems with the no contact list, but instead of simply eliminating it, it placed a monthly duty to report on Uniprop and a duty to monitor on APAC. (A. 13.) Not only is such a methodology ultimately ineffective, it is extremely costly. The trial court's solution is no solution.

Finally, the rule unduly and unnecessarily burdens – and hence, chills – protected speech. For instance, the rule essentially requires a person who wishes to engage in canvassing to check with the management every day to ensure that the canvasser does not accidentally knock on the door of a resident who has been added recently to the no contact list.

The trial court was not free, on this record, to put in place the restrictions that it has imposed. Nor did the trial court have any legal basis to impose a continuing monitoring obligation on APAC to ensure Ardmor does not abuse its no contact list. Residents of Ardmor have ample opportunity to protect themselves from leafleting or canvassing if they so desire without such a list. Less restrictive means – such as a resident posting a sign on the door – accomplishes the same goal for the resident who does not want to be disturbed. The no contact list rule is not in accord with Minn. Stat. § 327C.13.

CONCLUSION

Appellant APAC respectfully requests the time limitations placed on free expression activities within Ardmor be reversed. Such activities should be allowed from 8:00 a.m. to 9:00 p.m. seven days a week. The no contact list instituted by Uniprop cannot stand and APAC respectfully requests that this Court reverse the lower courts and hold that Uniprop's no contact list is prohibited as contrary to Minn. Stat. § 327C.13.

APAC is entitled to its attorney's fees on appeal pursuant to Minn. Stat. § 327C.15. APAC will petition for its fees in accord with Minn. R. Civ. P. 139.06. On reversal, APAC also respectfully requests that this Court order the trial court to award APAC all its fees incurred before that court.

Dated: June 23, 2006

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 12,668 words. This brief was prepared using Word Perfect 10.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).