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 *AMICI CURIAE* HOUSING PRESERVATION PROJECT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES----------iii

I. Free Speech Access is Particularly Critical in Manufactured Home Parks----------1

A. Amici Groups Offer a Broad Range of Experience in Door-To-Door Communications With Citizens----------1

B. Door-To-Door Activities Are a Particularly Important Form of Speech in Manufactured Home Parks----------3

C. The Minnesota Legislature Recognized the Importance of Free Speech in Manufactured Home Parks With its Adoption of Minn. Stat. § 327C.13----------7

II. Ardmore's Restrictions Violate the First Amendment and Minn. Stat. § 327C.13----------8

A. Because Ardmore's Restrictions Were Aimed at APAC and its Message, They Cannot be Upheld as Time, Place, and Manner Restrictions----------8

B. Even if Content-Neutral, Ardmore's Restrictions Still Violate the First Amendment and Minn. Stat. § 327C.13------10

1. Canvassing and Leafleting as a Form of Speech Enjoy the Highest Level of First Amendment Protection------10

2. Ardmore's Canvassing and Leafleting Time Limits Violate First Amendment Jurisprudence----------12

a. Courts Have Struck Down Canvassing/ Leafletting Curfews of Prior to Nine O'clock----12

b. Ardmore's Time Limitations Are Not Reasonable Time, Place and Manner Restrictions----------14

i. Ardmore's Time Limits Cannot Satisfy the Significant Interest Test----------15

ii. Ardmore's Time Limits Do Not Allow Adequate Alternative Channels of Communication----------19

3. Ardmore's No Contact List Also Creates Unreasonable Restrictions----------20

III. The Sunday Restriction Created by the Trial Court Constitutes Unconstitutional State Interference with Religion Under the Minnesota Constitution----------24

IV. CONCLUSION----------29

TABLE OF AUTHORITIES

FEDERAL CASES

Association of Community Organizations for Reform (ACORN) v. City of Frontenac, 714 F. 2d 813 (8th Cir. 1983) ---------- 13, 16, 17

Association of Community Organizations for Reform Now (ACORN) v. City of Dearborn, 696 F. Supp. 268 (E.D. Mich. 1988) ---------- 13, 17

Citizens for a Better Environment v. Olympia Field, 511 F. Supp. 104 (N.D. Ill. 1980) ---------- 13

City of Watseka v. Illinois Public Action Council, 796 F. 2d 1547 (7th Cir. 1986), aff'd 479 U.S. 1048, 107 S. Ct. 919 (1987), reh. denied 480 U.S. 926, 107 S. Ct. 1389 (1987) ---------- 12-13, 17

Cohen v. California, 403 U.S. 15, 91 S.Ct. 1780 (1971). ---------- 18

Community Health and Education Corporation (CHEC) v. Portland Park, L.L.P., Hennepin County District Court File No. CT 05-011318 ---------- 22

Connecticut Citizen Action Group v. Southington, 508 F. Supp. 43 (D. Conn. 1980) ---------- 13

Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York, 447 U.S. 530, 100 S.Ct. 2326 (1980) ---------- 9

Excalibur Group, Inc. v. City of Minneapolis, 116 F.3d 1216 (8th Cir. 1997) ----- 15

Heffron v. Int. Society for Krishna Consciousness, 452 U.S. 640, 101 S. Ct. 2559 (1981). ---------- 15

Horina v. City of Granite City, 2006 WL 1389100 (S.D. Ill. 2006). ---------- 16

Jobe v. City of Catlettsburg, 409 F. 3d 261 (6th Cir. 2005). ---------- 11

Krafchow v. Town of Woodstock, 62 F. Supp. 2d. 698 (N.D.N.Y. 1999) -------- 8-9

Krantz v. City of Fort Smith, 160 F. 3d. 1214 (8th Cir. 1998). ---------- 19

Kreshik v. Saint Nicholas Cathedral, 363 U.S. 190, 80 S. Ct. 1037 (1960)-------- 27

Marsh v. Alabama, 326 U.S. 501, 66 S. Ct. 276 (1946) ---------- 27

Martin v. City of Struthers, 319 U.S. 141, 63 S. Ct. 862(1943) ----------11

New Jersey Citizen Action v. Edison Tp., 797 F.2d 1250 (3rd Cir. 1986)---------- 13

New Jersey Environmental Federation v. Wayne Tp.,
310 F. Supp. 2d 681 (D.N.J. 2004)----------10, 13, 14, 15, 16, 17

New York Community Action Network, Inc. v. Town of Hempstead,
601 F. Supp. 2d 1066 (E.D.N.Y. 1984)---------- 13, 17, 18

Ohio Citizen Action v. City of Mentor-on-the-Lake,
272 F. Supp. 2d 671 (N.D. Ohio 2003)---------- 13, 16, 17

Schneider v. State (Town of Irvington), 308 U.S. 147, 60 S. Ct. 146 (1939)------ 11

Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836 (1948) ---------- 27

Talley v. State of California, 362 U.S. 60, 80 S. Ct. 536 (1960) ---------- 11

Ward v. Rock Against Racism, 491 U.S. 781, 109 S. Ct. 2746 (1989). --- 14, 15, 16

Watchtower Bible and Tract Society v. Village of Stratton,
536 U.S. 150, 122 S. Ct. 2080 (2002) ---------- 10, 11, 19, 23, 24

Westfall v. Board of Commissioners of Clayton County,
477 F. Supp. 862 (N.D. Ga. 1979) ---------- 14

Wisconsin Action Coalition v. Kenosha, 767 F.2d 1248 (7th Cir. 1985) ----------13

STATE CASES

City of Crystal v. Fantasy House, Inc., 569 N.W. 2d 225 (Minn. App. 1997) ---- 15

Erickson v. Sunset Memorial Park Association, 108 N.W.2d 434 (Minn. 1961)-- 27

Geraci v. Eckankar, 526 N.W. 2d 391, 399 (Minn. Ct. App. 1995) ---------- 25, 26

Hill-Murray Federation of Teachers v. Hill-Murray High School, 487 N.W. 2d 857 (Minn. 1992) ---------- 26

State v. Hershberger, 462 N.W. 2d 393 (Minn. 1990) ---------- 26

State v. Target Stores, 156 N.W. 2d 908 (Minn. 1968). ---------- 27, 28

STATE STATUTES

Minn. Stat. § 327C.095 ---------- 1, 6, 21

Minn. Stat. § 327C.13 ---------- passim

Minn. Stat. §§ 327, 327B and 327C ---------- 5, 21

OTHER AUTHORITIES

Andrew Kochera, Manufactured Housing Can Serve Older Persons, 8 Rural Voices 2, 13 (2003) ---------- 4

Kimberly Vermeer & Josephine Louie, The Future of Manufactured Housing, Joint Center for Housing Studies, Harvard University 17-19, (1997). ---------- 4

AARP, Manufactured Housing Community Tenants: Shifting the Balance of Power 2 (2004) ---------- 4

John Fraser Hart, et. al. The Unknown World of the Mobile Home, Johns Hopkins University Press 80 (2002). ---------- 4

Laurence H. Tribe, American Constitutional Law, 2nd Ed., 814 (1988) ---------- 9

I. Free Speech Access is Particularly Critical in Manufactured Home Parks.

A. Amici Groups Offer a Broad Range of Experience in Door-To-Door Communications With Citizens.

Housing Preservation Project (HPP), HOME Line, Jewish Community Action (JCA), Metropolitan Interfaith Council on Affordable Housing (MICAH), Community Stabilization Project (CSP) and the Minnesota Senior Federation respectfully submit this brief as amicus curiae.[1]

HPP is a nonprofit public interest law firm dedicated to the preservation and expansion of the supply of affordable housing. As part of its mission to preserve affordable housing, HPP has worked to protect the interests of manufactured home park residents faced with park closing and displacement by assisting residents with exercising the right of first refusal to purchase their park. HPP depends on the work of community organizers within the parks to convey critical information to residents and to organize the concerted response to threatened park closings required by Minn. Stat. § 327C.095 subs. 5, 6 and 7.

HOME Line is a nonprofit organization that provides free legal, organizing, education and advocacy services to tenants throughout Minnesota. A critical

[1] Pursuant to Minnesota Civil Appellate Procedure Rule 129.03, counsel for HPP, JCA, CSP, HOME Line, MICAH and Minnesota Senior Federation certifies that no counsel for a party authored this brief in whole or in part, and no person or entity other than HPP, JCA, CSP, HOME Line, MICAH and Minnesota Senior Federation made a monetary contribution to the preparation or submission of this brief.

component of HOME Line's work is the ability to communicate directly with residents in properties that are at risk of losing their affordability, including door-to-door communications. Additionally, through their legal hotline, HOME Line works directly with manufactured home park residents who are referred to them by All Parks Alliance for Change (APAC) for assistance.

JCA is a nonprofit organization with a mission of bringing together Jewish people from diverse traditions and perspectives to promote understanding and take action on social and economic justice issues in Minnesota. JCA has devoted substantial resources to affordable housing issues including community organizing.

MICAH is a nonprofit organization founded by religious leaders, housing advocates and low income housing developers in response to the accelerating homeless crisis. Through MICAH, more than 150 congregations from Jewish, Christian and Muslim faith traditions organize for justice in housing. MICAH works in partnership with other community groups in organizing around affordable housing issues. This includes working with groups that do direct community organizing, including APAC.

CSP is a nonprofit, member based organization in Saint Paul, Minnesota, which serves clients and members throughout the metro area. CSP's mission is to foster and preserve affordable rental housing for its clients and members, particularly people of color. One of the primary components of this mission is

community organizing, which requires access to residents of affordable housing where they live.

The Minnesota Senior Federation is a statewide alliance of mature Minnesotans committed to enhancing the quality of the lives of their members regarding concerns, including access to prescription drugs, affordable housing, Medicare reform and changes to Social Security. As an element of their work the Senior Federation engages in community organizing.

B. Door-To-Door Activities Are a Particularly Important Form of Speech in Manufactured Home Parks.

This case examines how far park owners can go to limit free speech access to manufactured home park residents, under Minn. Stat. § 327C.13. Specifically, this case examines whether a park owner may, under Minn. Stat. § 327C.13, limit leafleting and canvassing to the hours of Monday through Saturday from 11:00 a.m. to 6:00 or 7:00p.m., and establish and maintain a no-contact list.

The free speech issue at stake herein is affected by the context of manufactured home parks. Manufactured homes provide an affordable option for home ownership to low-income individuals. As a diverse population that has been traditionally underrepresented and under-served, a large percentage of park residents are working poor, single parents, and seniors living on fixed incomes. See

Andrew Kochera, Manufactured Housing Can Serve Older Persons, 8 Rural Voices 2, 13 (2003); Kimberly Vermeer & Josephine Louie, The Future of Manufactured Housing, Joint Center for Housing Studies, Harvard University 17-19, (1997).

Manufactured home park residents experience a unique living arrangement because, although they own their own homes, they rent the land upon which the homes are placed. Unlike renters of apartments, manufactured home park residents cannot easily relocate because the cost of moving a manufactured home is prohibitively expensive. See AARP, Manufactured Housing Community Tenants: Shifting the Balance of Power 2 (2004). Many parks simply will not accept older homes. See John Fraser Hart, et. al. The Unknown World of the Mobile Home, Johns Hopkins University Press 80 (2002). Additionally, some homes that are sufficient when left in their current location cannot withstand the physical stress of moving to another park even if another park would accept the home. Id.

As a result of this and other factors, the park owner has a great deal of control over the lives of park residents and, as the legislature indicated, resembles "an unelected mayor of a bedroom community" A. 71. In 1982 the legislature passed Minn. Stat. § 327C.13, guaranteeing manufactured home park residents and others freedom of expression. The law reads in relevant part:

> 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.

Minn. Stat. § 327C.13. The law is part of an extensive legislative scheme that exists for the protection of the rights of manufactured home park residents, including licensing requirements, health and safety codes, licensing of manufactured home sales and tenant landlord laws. Minn. Stat. §§ 327, 327B and 327C.

Because park residents by their very nature are geographically removed from the surrounding community and, in the absence of knowledge about their rights, are in a precarious and vulnerable position, their ability to connect with outside organizations offering assistance is critical. This access is essential for both the outside organization and the park resident. One of the primary methods of communication for such nonprofit organizations is though community outreach activities such as door knocking and leafleting. After years of experience, Amici groups have learned that frequently there is no substitute for canvassing and flyering door-to-door. These reasons include the lack of financial resources for mass mailings, a lack of availability of mailing addresses, the limited amount of time and attention that low income residents can give to mass mailings and an inability of some residents to read, whether due to illiteracy or to medical conditions that make reading difficult such as deteriorated eyesight due to advanced age. It is critical that such activities take place without interference from

management because the interests of residents are often directly in opposition to the interests of management.

Free speech in manufactured home parks is becoming even more contentious as the rate of park closures, and resident efforts to stop those closures, grows. In the last 6 years, 17 parks have closed in Minnesota, eliminating 309 affordable housing opportunities. In most of these cases, closings have taken place in connection with a sale of the park, which would trigger the residents' right of first refusal pursuant to Minn. Stat. § 327C.095 subd. 6. Under this statute, the residents, or a nonprofit organization operating on their behalf, have the opportunity to meet the would-be purchaser's price, thus averting a sale which would lead to closure. Id. A key to exercising this right, however, is securing the support of at least 51% of the residents. Id. This has to be done very quickly, as the residents get just 45 days to exercise their purchase right. Id. Residents and organizations assisting them obviously have a need to communicate widely, quickly and frequently. On the other hand, the park owner has a powerful incentive to block efforts to gain majority support, setting up the potential for repeated clashes over access to communicate. Thus the question of whether restrictions on communications with residents are permissible under Minn. Stat § 327C.13 becomes crucial in this circumstance.

Additionally, limits on flyering and canvassing apply not only to resident organizing around manufactured home park issues, but also instances where organizations canvas and flyer around other important issues as well. For example, the Minnesota Senior Federation organizes around issues such as Medicare and prescription drugs. Under the current rules, although people living in housing developments adjacent to the park could receive information unfettered by restrictions on access, residents within a manufactured home park could only be canvassed during limited times and, if the park owner established a no-contact list, might not be able to receive information at all.

HPP, JCA, CSP, HOME Line, MICAH and Minnesota Senior Federation all depend, either directory or indirectly, on the ability to communicate directly with residents though door knocking and leafleting. As will be discussed more fully below, the time restrictions and no-contact list rules Ardmore has imposed severely threaten these efforts to engage in protected speech.

C. The Minnesota Legislature Recognized the Importance of Free Speech in Manufactured Home Parks With its Adoption of Minn. Stat. § 327C.13.

In adopting Minn. Stat. § 327C.13, the Minnesota Legislature recognized that the unique nature of manufactured home parks required the establishment of

free speech rights in a way not normally applicable to non-governmental communities. As APAC has ably demonstrated in its brief herein, the legislature chose to incorporate First Amendment jurisprudence into its protection of free speech rights in manufactured home parks.. Amici will not repeat these arguments but instead will focus on how First Amendment law governs the particular restrictions Ardmore has imposed on communications in the park.

II. Ardmore's Restrictions Violate the First Amendment and Minn. Stat. § 327C.13.

A. Because Ardmore's Restrictions Were Aimed at APAC and its Message, They Cannot be Upheld as Time, Place, and Manner Restrictions.

As set out above, the Legislature intended to incorporate First Amendment jurisprudence with its references in Minn. Stat. § 327C.13 to "freedom of expression" and "reasonable limits as to time, place and manner." One important principle of First Amendment law is that a regulation adopted as a response to the specific content of speech is not a "time, place, or manner" restriction, regardless of its wording. Such regulation "must be scrutinized more carefully [than time, place, and manner restrictions] to ensure that communication has not been prohibited 'merely because public officials disapprove the speaker's views.'" Krafchow v. Town of Woodstock, 62 F. Supp. 2d. 698, 706 (N.D.N.Y. 1999)

(quoting Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York, 447 U.S. 530, 536, 100 S. Ct. 2326, 2332 (1980)); Laurence H. Tribe, American Constitutional Law, 2nd Ed., 1988, at 814 (a court should subject to more demanding scrutiny any governmental act intended to control expression).

In this case, APAC staff were threatened with arrest in April and June of 2003 for leafleting on the premises. At the time, the park had no rule which prohibited canvassing or leafleting. A. 82. Only after APAC brought this lawsuit and obtained a temporary injunction did the park owners adopt a rule limiting canvassing and leafleting. A. 8-9. It could not be more clear that the defendant's rule limiting canvassing and leafleting was promulgated in response to APAC's organizing activities and communications with residents of the park. The District Court erred by viewing this rule as a time, place, and manner restriction and permitting its implementation with a few minor adjustments to assure its "reasonableness." Because adoption of these rules was directly aimed at APAC and because the rules imposed limitations on APAC's communications with park residents that did not exist at the park until APAC began organizing there, the District Court erred by not enjoining the new park rules as abridgements of protected expression rather than "time, place, and manner restrictions."

B. Even if Content-Neutral, Ardmore's Restrictions Still Violate the First Amendment and Minn. Stat. § 327C.13.

When imposed by government bodies, the kinds of restrictions Ardmore imposed on APAC and other groups seeking to canvass and leaflet door to door have been regularly struck down as violative of First Amendment Free Speech. Nor do the modifications adopted by the Trial Court save the rule, which would remain crippling to APAC and other groups asserting the right to communicate.

1. Canvassing and Leafleting as a Form of Speech Enjoy the Highest Level of First Amendment Protection.

Courts have traditionally afforded the highest level of protection to individuals or groups actively involved in handing out pamphlets or conducting canvassing. New Jersey Environmental Federation v. Wayne Tp., 310 F. Supp. 2d 681, 691 (D.N.J. 2004). In Watchtower Bible and Tract Society v. Village of Stratton, 536 U.S. 150, 122 S. Ct. 2080 (2002), the Supreme Court reviewed fifty years of cases in which it had invalidated restrictions on door-to-door canvassing and pamphleteering, and identified several themes. First, the cases emphasize the value of the speech involved. Second, they discuss the historical importance of these door-to-door activities as vehicles for the dissemination of ideas. Finally, the Court emphasized that for groups with limited funding, canvassing and

pamphletting are essential, and often the only available means of communication. Although these Free Speech interests must be balanced with the some form of regulation, courts " must be astute to examine the effect of the challenged legislation and must weigh the circumstances and appraise the substantiality of the reasons advanced in support of the legislation." 536 U.S. at 163; 122 S. Ct. at 2088 (quoting Schneider v. State (Town of Irvington), 308 U.S. 147, 161, 60 S. Ct. 146, 151 (1939)).

Referring to leafleting, the Sixth Circuit recently declared, "it is a venerable and inexpensive method of communication that has permitted citizens to spread political, religious and commercial messages throughout American history, starting with the half million copies of Thomas Paine's *Common Sense* that fomented the American Revolution." Jobe v. City of Catlettsburg, 409 F. 3d 261, 264 (6th Cir. 2005). See also, Talley v. State of California, 362 U.S. 60, 80 S. Ct. 536 (1960) (pamphlets "have been historic weapons in the defense of liberty"); Martin v. City of Struthers, 319 U.S. 141, 146, 63 S. Ct. 862, 865 (1943) ("Door to door distribution of circulars is essential to the poorly financed causes of little people."). These door-to-door activities are also central to the work of Amici organizations submitting this brief. A curfew which effectively eliminates the prime time when these groups can reach their intended audience would not only cripple their efforts

but would deprive park residents of useful, and often critical, information that many of them would welcome.

2. Ardmore's Canvassing and Leafleting Time Limits Violate First Amendment Jurisprudence.

Ardmore's time limit rules, as modified by the Trial Court, bar canvassing or leafleting after 7:00 in summer months, after 6:00 the rest of the year, and altogether on Sundays. Numerous courts have struck down similar limitations. Moreover, the justifications offered by Ardmore and the Trial Court to uphold such " time, place and manner" restrictions have been repeatedly rejected by courts. Ardmore does not come close to meeting the standards developed by courts in order to sustain restrictions of this kind.

a. Courts Have Struck Down Canvassing/Leafletting Curfews of Prior to Nine O'clock.

Cities have frequently enacted ordinances barring door-to-door activities during evening hours and weekends. In almost every reported decision, such curfews have been struck down, for their substantial burdening of protected speech and lack of justification. City of Watseka v. Illinois Public Action Council, 796 F.

2d 1547 (7th Cir. 1986), aff'd 479 U.S. 1048 , 107 S. Ct. 919 (1987) reh. denied 480 U.S. 926, 107 S. Ct. 1389 (1987) (5:00 p.m. cutoff unconstitutional) ; New Jersey Citizen Action v. Edison Tp., 797 F.2d 1250 (3rd Cir. 1986) (curfew of 7:00 p.m. or half hour after sunset struck down); Wisconsin Action Coalition v. Kenosha, 767 F.2d 1248 (7th Cir. 1985) (8:00 p.m. curfew unconstitutional) ; Association of Community Organizations for Reform (ACORN) v. City of Frontenac, 714 F. 2d 813 (8th Cir. 1983) (6:00 p.m. cutoff unconstitutional) ; New Jersey Environmental Federation v. Wayne Tp.., 310 F. Supp. 2d 681 (D.N.J. 2004) (striking down curfew of one half hour after dusk) ; Ohio Citizen Action v. City of Mentor-on-the-Lake, 272 F. Supp. 2d 671 (N.D. Ohio 2003) (striking down curfew of 5:00 for some activities and 8:00 or a half hour after sunset for others) ; Association of Community Organizations for Reform Now (ACORN) v. City of Dearborn, 696 F. Supp. 268 (E.D. Mich. 1988) (injunction issued against 7:00 curfew); New York Community Action Network, Inc. v. Town of Hempstead, 601 F. Supp. 2d 1066 (E.D.N.Y. 1984) (striking down curfew of 7:00 or half hour after sunset) ; Citizens for a Better Environment v. Olympia Field, 511 F. Supp. 104 (N.D. Ill. 1980) (various ordinances, including curfew, unconstitutional) ; Connecticut Citizen Action Group v. Southington, 508 F. Supp. 43 (D. Conn. 1980) (6:00 struck down).

In the only case of which Amici are aware where evening restrictions were upheld, Westfall v. Board of Commissioners of Clayton County, 477 F. Supp. 862 (N.D. Ga. 1979), the court relied in part on the availability of unrestricted weekend hours as a sufficient alternative, which of course is not true in the instant case.

In these cases, courts have struck down the evening hour limits as unreasonable restrictions for essentially two reasons. First, the curfew was insufficiently narrowly tailored to achieve the city's goals; typically, the curfew operated so as to be both under-inclusive in effect and over-inclusive. Second, the restrictions did not allow for sufficient alternative channels for communication of this highly valued form of speech. As will be discussed below, Ardmore's restrictions similarly fail both tests.

b. Ardmore's Time Limitations Are Not Reasonable Time, Place and Manner Restrictions.

Although canvassing and leafleting are protected activities under the First Amendment, such activities are not necessarily immune from any form of government regulation. Wayne Tp., 310 F.2d at 691. If the regulation is content-based, a court will apply a strict scrutiny standard, whereas if the regulation is content-neutral, intermediate scrutiny is appropriate. Ward v. Rock Against Racism, 491 U.S. 781, 790-791, 109 S. Ct. 2746 (1989). Even assuming for the

moment that Ardmore's evening and weekend time limits were content-neutral (see contrary discussion above), then the test for whether those limits constitute valid time, place and manner restrictions, are whether the restrictions serve a significant governmental interest, and whether the restrictions leave open ample alternative channels of communication for the information. Wayne Tp, at 691; Heffron v. Int. Society for Krishna Consciousness, 452 U.S. 640, 647-648, 101 S. Ct. 2559 (1981). Minnesota Appellate courts have also followed this standard. City of Crystal v. Fantasy House, Inc., 569 N.W. 2d 225 (Minn. App. 1997).

i. Ardmore's Time Limits Cannot Satisfy the Significant Interest Test.

The regulation must be narrowly drawn to further a legitimate or significant objective. Heffron, 452 U.S. at 658, 101 S.Ct. at 2569. The requirement of narrowly tailoring is satisfied so long as the regulation promotes a substantial interest that would be achieved less effectively absent the regulation and the means chosen does not burden substantially more speech than is necessary to further the city's content-neutral interest. Excalibur Group, Inc. v. City of Minneapolis, 116 F.3d 1216, 1221 (8th Cir. 1997), quoting Ward v. Rock Against Racism, 109 S. Ct.

2746, 2758 (1989).[2] The party imposing the restriction has the burden of showing evidence supporting its proffered justification. Horina v. City of Granite City, 2006 WL 1389100 (S.D. Ill. 2006). The mere assertion of substantial governmental interests is not enough to satisfy this factor. Wayne Tp., 310 F.Supp. 2d at 695.

At trial no testimony was presented by Ardmore as to why it adopted these particular time limitations on canvassing and leafleting. This failure to submit evidence by itself means Ardmore has failed to carry its burden.

In actuality, the only rationale offered to justify restrictions were those offered by the Trial Court to support its decision modifying the Ardmore time restrictions. On page 16 of the Amended Findings of Fact, Conclusions of Law and Order for Judgment, the Court offered this rationale for limiting door-to-door activities to daylight hours :

> It would conceivably be more difficult for the management of Ardmore 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 extend the time, as requested by Plaintiffs, to Sundays, as most of the residents should be able to be contacted during the hours

[2] Several of the courts in the 1980's which addressed these curfew cases, such as the Eighth Circuit in Frontenac, concluded that the narrow tailoring requirement meant that a city was obligated to adopt the least restrictive means of accomplishing its end. In 1989, the Supreme Court in Ward rejected that approach in holding that the narrow tailoring requirement did not lead to a least restrictive alternative analysis. This modification in the test has had little practical impact in the outcome, however, as post-Ward rulings in the curfew cases have come out the same way. See, Wayne Tp. and City of Mentor-on-the-Lake, *supra.*

the Court is permitting. The Statute requires reasonableness, not perfection. (A. 21)

One of the problems with this reasoning is that the statute, because it incorporates First Amendment principles, requires considerably more than the usual definition of "reasonableness." The law requires narrow tailoring which, in fact, comes much closer to "perfection" than the Trial Court suggests. To the extent that the Court's justification for the time restrictions can be substituted for Ardmore's failure to make its own case, the significant interests seem to be two: ensuring the safety of the residents from strangers after dark, and protecting the privacy of the residents. These two rationales, safety and privacy, have been repeatedly offered up by cities and almost uniformly rejected by courts. See, Wayne Twp., Frontenac, Mentor-on-the-Lake, Watseka, Dearborn, and Hempstead, *supra.* These courts have rejected the anti-crime rationale for multiple reasons, including the fact that no evidence existed linking a particular hour of the day to greater crime, the unlikelihood that criminals would be deterred by a curfew on solicitation, and the greater effectiveness of enforcing existing criminal laws.

Similar defects exist with respect to the rationale offered for the Ardmore restrictions. Moreover, the rationale that the Trial Court offers for the curfew, that it could aid the Ardmore management in monitoring the coming and goings of strangers, is faulty. First, the curfew provides no help with security with respect to strangers entering who claim not to be canvassing or leafleting. Ardmore's

restrictions are not aimed at strangers in general; they are aimed only at strangers who want to communicate, as well as neighbors. Second, there is no evidence that the Ardmore management does any such monitoring and, even if they did, monitoring would presumably be no less necessary during daytime hours. Finally, the curfew vastly overreaches when, in the name of monitoring "strangers" it prohibits activities involving everyone from trick-or-treaters and girl scout cookie-sellers to park residents themselves who may want to knock on a neighbor's door for any of a number of reasons.

Justifying the time restrictions based on resident privacy is equally flawed. As the cases cited above have repeatedly held, residents themselves can decide on an individual basis to post "do not disturb" signs on their property.[3] This protects privacy without cutting off communications to those who may welcome a knock on the door or a flyer. After all, Free Expression protections belong not just to the person who wants to communicate a message, but also to a person who may want to receive it. "The fact that there is a modicum of annoyance that a homeowner might have to bear to protect NYCAN's rights is a recognized price for the freedom of expression." Town of Hempstead, 601 F.Supp. at 1071 (citing Cohen v. California, 403 U.S. 15, 91 S.Ct. 1780, (1971)).

[3] The decision of an individual homeowner to place a notice on their home is quite different than Ardmore's proposed no-contact list. See discussion in Section 3.

Finally, it should be noted that to the extent there exists a "privacy" rationale for the intrusion of canvassing, that rationale does not apply to leaflets on a doorstep. The public interest in the freedom to distribute information far outweighs the minimal intrusion of such actions. See, for example, Krantz v. City of Fort Smith, 160 F. 3d. 1214 (8th Cir. 1998).

In summary, neither the non-existent rationales offered by Ardmore nor the rationales suggested by the Trial Court are sufficiently tailored to justify this sweeping imposition on free speech rights.

ii. Ardmore's Time Limits Do Not Allow Adequate Alternative Channels of Communication.

Ardmore's restrictions (as modified by the Court) also fail because they do not allow for alternative channels of communication which are effective in this case. As a number of courts have acknowledged, for organizations that have limited funds to use to convey their messages, there are no good alternatives to canvassing and leafleting. Watchtower Bible, *supra.* In this case the Trial Court found that APAC needs to communicate with residents through flyering and door-to-door communication, and that leafleting resulted in greater attendance at APAC meetings and increased members joining APAC. A. 8. Despite testimony from APAC staff that barring access after 6:00 deprived APAC of the ability to reach many people not yet home, the Trial Court imposed a 6:00 limit for most of the

year. Courts have repeatedly found that early evening curfews deprive organizations of the only effective channel for communication available to them. See cases cited at section II(B)(2)(a) above. Nor is the lack of a valid alternative an issue just for APAC. There are times when there are no adequate alternatives to face-to-face communications for all of the organizations submitting this brief.

3. Ardmore's No-Contact List Also Creates Unreasonable Restrictions.

Ardmore's no-contact list has the potential to be more destructive of free speech than even the time limitations. This is not because organizations like APAC or Amici fear that homeowners will not want to speak to them. Groups that make door-to-door contacts generally learned long ago that it would be counter-productive to force themselves upon residents who wished to be left alone. Amici certainly respect the right of people like the Ardmore residents to exempt themselves from unwanted contacts.

How residents exempt themselves, however, makes all the difference. Homeowners are free to place a sign with " no solicitation" or similar message on their homes. This is a proven, effective and legal means of protecting privacy. What Ardmore wants to do, however, has enormous potential for mischief, in this unique context of a manufactured home park. The statute at issue in this case is

part of a chapter, § 327C, which contains numerous provisions spelling out a host of rights and duties between park owners and the residents. The Legislature has recognized that manufactured home park residents suffer from particularly precarious circumstances since they rent spaces for homes that cannot easily be moved. As a result, rules to protect residents' numerous rights have been declared in very specific fashion. These circumstances also tend to make natural adversaries of park owners and groups who seek to educate park residents on their rights. This creates quite a different context than in the typical case of a city imposing solicitation restrictions on all sorts of groups, with which it has neutral or no relationships.

Suppose an advocacy group wanted to canvass Ardmore residents to educate them on how they could combat improper practices by management, or on how they could fight back to try to stop the park owner from selling and closing the park (a frequent event in Minnesota the last several years). It would be an enormous temptation for a park owner to try to insulate himself from such efforts and undercut the educational effort by going door-to-door himself to induce residents to sign the no-contact list. Under Minn. Stat. § 327C.095, if a park owner proposes to close a park in connection with a sale, the residents can present their own offer to purchase if they can identify 51% of the residents who support such action. It would not take much imagination on the part of a park owner to realize

that he can easily block resident efforts to achieve 51% support by signing up as many residents as possible to the no-contact list.[4] Whether the park owner made misrepresentations or not in an effort to sign up residents, the fact of the park owner's substantial leverage over resident lives would likely lead some residents to sign for that reason alone. In short, the park owner administering no-contact list is a classic case of the fox guarding the henhouse.

The Trial Court acknowledged this risk in adopting a process designed to allow APAC to "monitor" the no-contact list for abuses. However, this imposes a substantial burden on APAC which has no basis in the law. As has been discussed above, our system presumes a right to free speech which government (or in this case a party standing in the shoes of government) has a heavy burden to overcome. The burden should be on Ardmore, not APAC. More fundamentally, however, the no-contact list is utterly unnecessary because residents can protect their own privacy without the help of Ardmore management.

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[4] This scenario is not far fetched. Within the last year both APAC and HPP worked with residents of the Shady Lane Manufactured Home Park in Bloomington when the owner announced he was selling and closing the park. When the residents sued to exercise their "right of first refusal" park purchase rights, the park owner countered with a campaign to recruit residents to the owner's side and to undercut the residents' claims to have majority support. See Community Health and Education Corporation (CHEC) v. Portland Park, L.L.P., Hennepin County District Court File No. CT 05-011318.

The potential for manipulation is not the only fault with no-contact list. By requiring parties seeking to canvass or leaflet to first come to the management office to check in with management and review the List, additional impediments to free speech are erected. Organizers such as those who work for APAC or Amici who may want to enter Ardmore to discuss tenant rights will first have to present and apparently identify themselves to management, their adversary. In a similar situation, the Supreme Court had no hesitation in striking down a requirement that persons had to register with the city prior to engaging in free speech activities. Watchtower Bible, *supra.* ("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 every day public discourse a citizen must inform the government of her desire to speak to her neighbors and then obtain a permit to do so.") 536 U.S. 150, 165-166, 122 S. Ct. 2080, 2089.

The Supreme Court in Watchtower Bible noted two other ways that a prior registration requirement burdens speech that would be equally applicable to Ardmore's requirement to first come to the management office to check the no-contact list. First, the Court noted that this kind of requirement necessarily means the canvasser must surrender his anonymity, which can be a major detriment, particularly for persons advocating for unpopular causes. 536 US at 166, 122 S.

Ct. at 2089. Second, the Court identified a "significant amount of spontaneous speech" effectively banned by the ordinance :

> A person who made a decision on a holiday or weekend to take an active part in a political campaign could not begin to pass out handbills until after he or she obtained the required permit. Even a spontaneous decision to go across the street and urge a neighbor to vote against the mayor could not lawfully be implemented without first obtaining the mayor's permission.

536 US at 167, 122 S. Ct. at 2090. The same problem exists here because the right to flyer or canvass depends on the ability to first visit the management office to check in with the List. The office is closed most evenings at 5:00, however, and on the weekend is closed at noon on Saturday.

In short, the no-contact list invites potential for abuse, burdens the exercise of speech in multiple ways, and is superfluous given the fact that residents can easily protect themselves.

III. The Sunday Restriction Created by the Trial Court Constitutes Unconstitutional State Interference with Religion Under the Minnesota Constitution.

The Trial Court's modification of Ardmore's restrictions made Sundays off limits for canvassing and leafletting. The Court's only justification was that most residents should be able to be contacted at other times. Implicit in the distinction is the notion that Sundays are set aside for religious observance but Saturdays are

not. This distinction not only breaks down for religious groups such as Jews who celebrate the Sabbath on Saturday, but it actively interferes with free speech access both for Jewish park residents and for Jewish advocacy organizations such as JCA.

The Minnesota Constitution, Article I, section 16 provides protections beyond those of the U.S. Constitution with respect to freedom of religion. While the U.S. Constitution prohibits restrictions on free exercise of religion, the Minnesota Constitution does not allow even an infringement on or interference with religious freedom. Geraci v. Eckankar, 526 N.W. 2d 391 (Minn. Ct. App. 1995). This prohibition goes beyond practices that prohibit religious practices, if the regulations merely interfere with religious practices. Id.

For the purposes of the freedom of religion provision of the Minnesota Constitution, the judiciary, as well as the legislature, is prohibited from violating this provision. Geraci v. Eckankar, 526 N.W. 2d 391, 399 (Minn. Ct. App. 1995). In cases such as the present one, where it was the court and not the private property owner who imposed a rule that interfered with freedom of religion, this link is evident for it was the court which failed to look at the potential religious implication of the new rule.

Under the freedom of conscience clause of the Minnesota Constitution a rule that has the effect of interfering with religious freedom must pass a four prong test: 1. whether the objector's belief is sincerely held; 2. whether the regulation burdens

the exercise of religious beliefs, 3. whether the state's interest in regulations is compelling, and 4. whether the state regulation uses the least restrictive means. Hill-Murray Federation of Teachers v. Hill-Murray High School, 487 N.W. 2d 857 (Minn. 1992); Geraci v. Eckankar, 526 N.W. 2d 391 (Minn. Ct. App. 1995). Additionally, the government interest involved must be one of peace and safety, with a burden on the government to demonstrate that there are no reasonable alternative means to achieve the same end. State v. Hershberger, 462 N.W. 2d 393 (Minn. 1990). For the same reasons that the safety justifications failed the free speech test discussed above, these reasons fall short of the justifications needed to burden religious rights.

The district court determined in its findings that the ability to canvass and leaflet was important and that, due to the limitations of availability of people on weekdays it was critical that organizers be permitted to canvas and leaflet on weekends. A. 10. The court then went on to permit such activities on Saturday, but not on Sunday. A. 13. There was no justification given as to why Saturday was preferable to Sunday as a day for such activities, nor was there any justification given as to why it was not permissible to canvass or leaflet on both days. A. 21. Additionally, the court failed to look beyond the needs of APAC to other organizations that might have an interest in leafleting or door knocking in manufactured home communities.

The courts have long held that court action is improper if it would have the effect of denying constitutional rights. For example, in Erickson v. Sunset Memorial Park Association, 108 N.W.2d 434 (Minn. 1961), the court determined that the plaintiff could not enforce a discriminatory covenant through judicial action because any determination by the court upholding such covenants would be an unconstitutional state action. 108 N.W. 2d 434, 436-37 (Minn. 1961) (citing Shelley v. Kraemer, 334 U.S. 1, 19, 68 S. Ct. 836, 845 (1948) for the proposition that enforcement by court of discriminatory covenants would be unconstitutional denial of equal protection though state action). The U.S. Supreme Court specifically visited this issue in Kreshik v. Saint Nicholas Cathedral, finding that the Constitution prohibits the judiciary as well as other branches of government from violating free exercise rights. 363 U.S. 190, 191, 80 S. Ct. 1037, 1038 (1960). See also Marsh v. Alabama, 326 U.S. 501, 66 S. Ct. 276 (1946) (holding that if rules of private property or trespass are employed to prevent an individual because of religious or political views from distributing literature in a company town, those rules violate the First and Fourteenth amendments).

The courts have, in the past, upheld certain provisions prohibiting commercial activities on Sunday under the U.S. and Minnesota Constitutions. State v. Target Stores, 156 N.W. 2d 908 (1968). The present case, however, is distinguishable on several grounds. First of all, the activities that are engaged in

and protected though the application of Minn. Stat. § 327C.13 are not commercial activities, such as in the State v. Target, but instead are noncommercial activities. These activities are traditionally afforded greater protections by the courts.

Another significant distinction is that, as a practical matter, the decision in this case could prevent activities entirely for certain religious groups. While the commercial activity that was present in State v. Target could occur on a weekday just as easily as on a Sunday, the types of activities that nonprofit community organizers engage in, as the court acknowledged below, require that the organizers have access to residents on the weekend. The distinction drawn between Saturday and Sunday, coupled with the determination that weekend community organizing is critical, means that as a practical matter, people who have a Sabbath on a Saturday will be hindered in community organizing while those with a Sabbath on a Sunday will be able to communicate with residents.

In summary, the Trial Court's Sunday restriction improperly burdens religious freedom and should be nullified as well.

IV. Conclusion

Amici groups urge the Court to reverse those aspects of the Court of Appeals decision affirming the Trial Court's approval of Ardmore's time restrictions and use of the no-contact list, consistent with the above arguments.

Dated this 30th day of June, 2006

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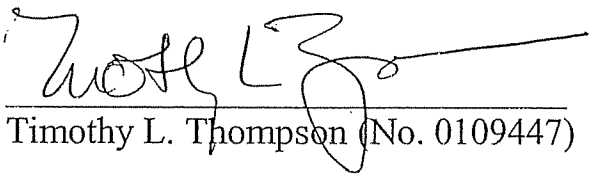
CERTIFICATION

I certify that this memorandum complies with the length and type size limitations of Minn. Civ. R. App. P. 132.01, subd. 3(c)(1). The word count tool of Microsoft Word, version 97 SR-2, applied to include all text including headings, footnotes and quotations, indicates that this memorandum contains 6,184 words, exclusive of pages containing the table of authorities and table of contents. The memorandum uses a size 14 type face.

Dated this 30th day of June, 2006



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