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State of Minnesota
In Supreme Court

OFFICE OF
APPELLATE COURTS

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FILED

All Parks Alliance for Change,

Petitioner,

v.

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

Respondent.

REPLY BRIEF OF PETITIONER ALL PARKS ALLIANCE FOR CHANGE

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I. RESPONSE TO UNIPROP'S STATEMENT OF THE CASE AND FACTS.

Respondent Uniprop Manufactured Housing Communities Income Fund, d/b/a Ardmor Village (Uniprop) incorrectly sets out in its brief on pages 3-4 the sequence of events with regard to Uniprop's promulgation of the August 2004 rule (hereinafter rule) which created the no-contact list and placed restrictive times on canvassing, leafleting, etc. (A. 114, 116.)[1] This lawsuit was commenced in February 2004 and Appellant All Parks Alliance for Change (APAC) had filed a motion for summary judgment and for permanent injunctive relief on July 28, 2004. (A. 50.) It was in response to APAC's motion that Uniprop issued its rule, which rule is at issue in this case. (A. 38, 114, 116.)

The rule at issue was promulgated at Uniprop's corporate level. (T. 62-63.) The undisputed fact of record is that there is no evidence of record as to why Uniprop adopted the particular time limitations on canvassing and leafleting and created a no contact rule. At trial, Uniprop presented Ardmor Village Manager Mary McGaffey. Ms. McGaffey had no role in the promulgation of Uniprop's rule. She had no idea what Uniprop took into consideration in devising its rule because she was "not involved in that process." (T. 66.) Ms. McGaffey admitted that to her knowledge no Ardmor resident had requested that Uniprop create and maintain a no contact list. (T. 62-63.)

Ms. McGaffey did assert she had received complaints from residents in response to door-to-door activities, but Ms. McGaffey kept no log of such complaints and did not

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[1] As Uniprop admits, its rule prior to that time was a prohibition of all non-commercial door-to-door canvassing and leafleting in Ardmor. (Uniprop's Brief, p. 2.)

identify any residents that had purportedly complained. Nor did Ms. McGaffey distinguish between commercial and noncommercial activities within the park. Moreover, Ms. McGaffey testified that the rule was created by Uniprop in response to APAC's lawsuit. It had nothing to do with alleged complaints about other organizations or individuals coming into Ardmor. (T. 56.)

Uniprop also focuses factually on the leafleting/canvassing/assembly activities of APAC. But it is ultimately irrelevant to this case when APAC usually handed out leaflets or when it held its community meetings. Whatever time, place and manner restrictions applied by the Court to APAC will apply to all who enter Ardmor. The restrictions imposed by Uniprop affect not only APAC but any organization/individual who wishes to speak to Ardmor residents and extends to the residents' desire to speak to each other.

II. REASONABLE TIME, PLACE AND MANNER IS A TERM OF ART AND SHOULD BE APPLIED AS INTERPRETED IN FIRST AMENDMENT CASES.

A. Criteria Developed by Court in First Amendment Cases Should Apply.

The First Amendment right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read, the freedom to inquire, and the right to assemble. Griswold v. State of Connecticut, 381 U.S. 479, 482-83 (1965); United Mineworkers of America District 12 v. Illinois State Bar Ass'n, 389 U.S. 217, 222 (1967) (the right to assemble peaceably and to petition are rights intimately connected both in origin and in purpose with the other First Amendment Rights of free speech and free press). 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 non-commercial purposes. The Legislature provided that a park owner may only adopt and enforce "rules that set reasonable limits as to time, place and manner."

Uniprop asserts that despite the statutory language used, because the Legislature did not include the phrase "First Amendment" in the statute, the Legislature's use of the term "reasonable time, place and manner" does not implicate the analysis utilized in First Amendment cases. APAC disagrees.

The Legislature did not choose the language it used in Minn. Stat. § 327C.13 in a vacuum. The statute at issue was enacted in 1982. In 1976, this Court in Koppinger v. City of Fairmont, 311 Minn. 186, 248 N.W.2d 708, 712 (1976), states:

> It is also clear, however, that even within the protected sphere of "expression" or "speech", communications are subject to reasonable regulations to control the time, place and manner of expression.

Until this case, the Court of Appeals itself had continually recognized that the phrase "reasonable time, place and manner," when used in the context of freedom of expression, allows only for restrictions that are content-neutral, narrowly tailored to serve a significant government interest and which left open ample alternative channels of communication." State v. Scholberg, 412 N.W.2d 339, 341, n.1 (Minn. Ct. App. 1987), rev. denied (recognizing in public forums the government may enforce reasonable time, place and manner restrictions as long as the restrictions are "content-neutral, are narrowly

tailored to serve a sufficient government interest and leave open ample alternative channels of communication"); State v. Castellano, 506 N.W.2d 641, 645 (Minn. Ct. App. 1993) (recognizing that the government may enforce regulations as to time, place and manner of expression which are content-neutral, narrowly tailored and leave open ample channels of communication); Goward v. City of Minneapolis, 456 N.W.2d 460, 464 (Minn. Ct. App. 1990) (recognizing the time, place and manner analysis had been routinely applied in cases involving zoning laws restricting speech on privately owned property); Welsh v. Johnson, 508 N.W.2d 212, 214-15 (Minn. Ct. App. 1993) (analyzing whether restraining order was an infringement of protestors' right to free speech based on reasonable time, place and manner restrictions test enunciated by the U.S. Supreme Court). There is no reasoned basis offered by Uniprop to apply different criteria here.

The fact that the phrase "reasonable time, place and manner" has been used in different contexts does not detract from APAC's offered analysis. For example, it is true that the Uniform Commercial Code (UCC) provides that a buyer may exercise his right to inspect goods at any reasonable place and time and in any reasonable manner. Minn. Stat. § 336.2-513, subd. 1 (1965). In that context, "reasonableness will be determined by trade usages, past practices between the parties and other circumstances of the case." U.C.C. § 336.2-513, comment 3. In this case, the Court is being asked to construe the phrase "reasonable limits as to time, place and manner" in the context of a statute entitled "freedom of expression," which statute places restrictions on a park owner's ability to limit free expression rights within a park. Established canons of statutory interpretation

require that statutes "must always be construed as a whole, and the particular meaning to be attached to any word or phrase is usually to be ascertained from the context, the nature of the subject treated of, and the purpose or intention . . . of the body which enacted or framed the statute or constitution." Tankar Gas v. Lumbermen's Mutual Cas. Co., 215 Minn. 265, 9 N.W.2d 754, 757 (1943). Ultimately, the phrase "reasonable time, place and manner" cannot be isolated from the statutory context in which it is used. City of St. Louis Park v. King, 246 Minn. 422, 75 N.W.2d 487, 492 (1956) (noting that the court should consider the meaning of words and phrases "by inquiring into the sense of their employment in the connection in which they are used"); Christensen v. Dept. of Conservation, Game and Fish, 285 Minn. 493, 175 N.W.2d 433, 437 (1970) (observing that statutes must be construed as a whole and that meaning should be ascertained from context).

Any person is free to accept Uniprop's invitation to rent space for his or her manufactured home; the Legislature has made clear, however, that such a choice cannot be at the expense of relinquishing basic First Amendment rights. The Legislature was obviously concerned with the public/private, public/nonpublic forum distinctions which had been raised in similar contexts. That concern is illustrated in this case where, despite the unambiguous language of Minn. Stat. § 327C.13, Uniprop argues "state action is a pre-requisite to First Amendment protections." (Uniprop's Brief, p. 14.) With the enactment of § 327C.13, the Legislature eliminated any and all arguments by a manufactured home park that it was a private, nonpublic forum and it therefore could limit

noncommercial expression in its park by rules that failed to meet the free expression parameters of a reasonable time, place and manner regulation.

In this case, the Court is being asked only to address modes of regulation in the noncommercial context. It is the First Amendment criteria that have been applied by the courts in assessing reasonableness of limitations in the noncommercial context that APAC seeks to have applied here.

Uniprop is correct that commercial speech is also protected by the First Amendment. State v. Century Camera, Inc., 309 N.W.2d 735, 739 (Minn. 1981). But as this Court has stated: "Commercial speech is given 'a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, . . . allowing modes of regulation that might be impermissible in the realm of noncommercial expression,'" quoting Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 456 (1978). It is also true, as Uniprop points out, that Minn. Stat. § 327C.13 does not address commercial speech. It speaks only to freedom of expression in the noncommercial context. The issue of commercial speech and its regulation by a manufactured home park is not presently before this Court. The fact that the Legislature chose to address only noncommercial speech does not change the reasonable time, place and manner analysis as offered by APAC.

B. Uniprop Offers No Framework for Analysis and the Record Does Not Support the Lower Courts' Holdings.

Uniprop asks this Court to reject analysis of reasonable time, place and manner under guiding First Amendment principles, but offers no alternative framework for

analysis. By Uniprop's silence, it must also be assumed that if the guiding First Amendment principles are applied here, Uniprop does not disagree with the analysis offered by APAC. Uniprop's time restrictions and no contact list cannot withstand First Amendment guidelines scrutiny.

1. There is no support for Uniprop's time restrictions.

Uniprop simply asserts that the limitations it has placed are reasonable time, place and manner restrictions and contends the trial court's ruling is supported by "Ardmor Village's interest in maintaining a safe neighborhood." (Respondent Uniprop's Brief at p. 15.) But as the record reflects, Uniprop presented no evidence that the purpose of its rule was based on any purported interest in the safety of its residents. Further, any self-serving safety concern now expressed by Uniprop is directly contradicted by the Ardmor Community Covenants promulgated by Uniprop which state:

> L. SECURITY
> It is the Resident's sole responsibility, and not the Community's, to provide for his own security needs, including the need for fire or police. The providing of Courtesy Patrols or gates by the Community does not constitute providing of any security service. In the event of any emergency, local police or fire departments, or 911 should be contacted.

(A. 126.) (Emphasis added.)

Nor does Uniprop explain how its unsupported claim of "safety" supports the time restrictions it has put in place. At best, Uniprop has used safety to support limited evening hours, which time limitations have been routinely rejected by other courts as unreasonable. (See cases at pp. 30-39 of Appellant's Brief.) No explanation has ever

been offered by Uniprop for its Sunday prohibition on canvassing/leafleting. Purported safety concerns certainly cannot be the reason behind that Sunday ban. Likewise, Uniprop's rule does not permit free expression activities before 11:00 a.m. But even in the winter it is daylight by 9:00 a.m. There is no support for Uniprop's time restrictions.

2. There is no support for the no contact rule.

There is no reason for Uniprop to maintain a no contact list and none was offered by those who promulgated this rule. If Uniprop's true concern is to protect residents who do not want to be bothered, the residents themselves, without any action by the park, can protect their right to be left alone. As the United States Supreme Court explained in Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 536 U.S. 150, 168-69 (2002), the posting of a no solicitation sign coupled with a resident's unquestioned right not to answer the door "provides ample protection for the unwilling listener."

What the United States Supreme Court has not permitted is a requirement that a door-to-door canvasser and pamphleteer must first present himself or herself to a governmental authority before engaging in such activities. Here Uniprop requires just that. Uniprop ignores that its no contact rule requires the following:

- the no contact list is ordered kept at the Ardmor office by Ardmor personnel;
- any person desiring to engage in any door-to-door activities must inform Uniprop prior to engaging in such activity because Ardmor management is the keeper of the list;

- because the list must be obtained from Ardmor management before engaging in free expression activities, the rule precludes anonymous speech or spontaneous speech; and

- free expression is further frustrated because Ardmor's office is open limited hours and its hours do not coincide with Uniprop's time restrictions on canvassing/leafleting.

(A. 116.) The no contact rule promulgated by Uniprop is contrary to the very principles set forth in Watchtower Bible and Tract Society of New York.

In support of the no contact rule, Uniprop quotes the United States Supreme Court's decision in Martin v. City of Struthers, 319 U.S. 141, 148 (1943), where the United States Supreme Court stated that "the National Institute of Municipal Law Officers has proposed a form of regulation to its member cities which would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed." The United States Supreme Court, in a footnote, however, further stated "we do not, by this reference [to National Institute of Municipal Law Officers] mean to express any opinion on the wisdom or validity of the particular proposals of the Institute." Id. at 148, n.13. Martin does not support Uniprop's no contact rule.

Park residents are certainly entitled to be left alone, if they so choose. But each resident can make the choice for themself by placing a sign on their home or not answering the door. Their rights will be respected. The policing does not and cannot rest with the manufactured park owner through a no contact rule/list. The very purpose of

Minn. Stat. § 327C is to curb potential abuses of power by a park owner. The no contact list is contrary to 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 attorneys' 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: August 8, 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 2,583 words. This brief was prepared using Word Perfect 10.

Dated: August 8, 2006

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