

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Case Type: Other Civil  
(Charitable Law Violations)

State of Minnesota, by its  
Attorney General, Lori Swanson,

Court File No. 27-CV-15-9043  
Hon. Bruce D. Manning

Plaintiff,

vs.

TVI, Inc., d/b/a Savers, and Apogee Retail,  
LLC,

Defendants.

**STATE OF MINNESOTA'S  
MEMORANDUM OF  
LAW IN SUPPORT OF  
TEMPORARY INJUNCTION**

**INTRODUCTION**

The State of Minnesota (“State” or “Minnesota AGO”) brings this motion to temporarily enjoin Defendant TVI, Inc., d/b/a Savers (“Savers”)—part of a for-profit, billion-dollar retail conglomerate—from unlawfully soliciting charitable donations because it is an unregistered professional fundraiser for Minnesota charitable organizations. Savers solicits donations of clothing and other household goods from the public on behalf of multiple different charities. Savers then resells these goods in its for-profit retail stores for a hefty markup compared to the pennies on the dollar it pays to the charities. Because it solicits charitable contributions, Minnesota law requires Savers to register with the State as a professional fundraiser. Yet Savers has for years solicited donations in Minnesota without being registered.

The state law registration requirements that Savers has disregarded are meant to provide transparency to the Minnesota public and donors. Such transparency allows the public and donors to determine the extent to which their donated goods benefit a charitable purpose versus a for-profit corporation. Through this straightforward motion, the State asks the Court to enjoin

Savers from soliciting donations in Minnesota unless and until it properly registers as a professional fundraiser with the Minnesota AGO, as required by law.

## FACTS

### I. SAVERS' FOR-PROFIT BUSINESS OPERATIONS AND ITS PROFESSIONAL FUNDRAISING ARRANGEMENT WITH THE CHARITIES.

TVI, Inc., d/b/a Savers, is a Washington corporation.<sup>1</sup> Savers operates more than 290 for-profit thrift stores nationwide that sell clothing, furniture, and other household goods to the public.<sup>2</sup> The company operates approximately 15 for-profit thrift stores in Minnesota that do business under the names Savers, Unique Thrift, and Valu Thrift.<sup>3</sup>

Savers' business model involves contracts with various charitable organizations through which it obtains clothing, furniture, books, and other household goods that donors donate to charitable organizations to benefit the mission of the charity.<sup>4</sup> While the methods of solicitation vary, Savers has solicited donations in Minnesota through telemarketing calls, direct mailings, websites, face-to-face interactions, brochures, posters, at "community donation centers," and by other public advertising.<sup>5</sup> Savers distributes receipts to donors to enable them to deduct the items donated to the charity on their tax returns.<sup>6</sup>

Savers acquires the clothing and other goods that donors provide to the charities with which it has contracted in one of two ways: (1) in some cases, the charity or a Savers subsidiary collects donated goods directly from Minnesota donors and delivers them to Savers stores;<sup>7</sup> (2) in

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<sup>1</sup> Affidavit of Elizabeth Kremenak of June 3, 2015 ("6/3/15 Kremenak Aff."), Ex. 1. Defendant Apogee Retail, LLC, is a wholly-owned subsidiary of TVI, Inc.

<sup>2</sup> *Id.*, Ex. 2.

<sup>3</sup> *Id.*, Ex. 3.

<sup>4</sup> *See id.*, Exs. 4-17.

<sup>5</sup> *Id.*, Exs. 18-22.

<sup>6</sup> *See id.*, Exs. 23-24.

<sup>7</sup> *See id.*, Ex. 15 ¶ 7, 16 ¶ 7, and 17 ¶ 7.

other cases, Minnesota donors deliver the goods directly to Savers at in-store locations or other on-site donation spots, with the understanding the donations will benefit their chosen charity.<sup>8</sup>

Savers pays each charitable organization a contracted-for rate for the goods that the charity's donors give to the charity.<sup>9</sup> Savers then resells these donated goods to the public in its for-profit retail stores for an amount substantially in excess of what it pays the charity for the goods. Savers has historically paid charities only about 40 to 45 cents for each pound of donated clothing,<sup>10</sup> and retains within the for-profit conglomerate all of the revenue from the resale of these goods to the public. In other words, if a donor donated a one-pound suit that was sold at a Savers store for \$100, the charity would get 40 cents and Savers would keep \$99.60. As described further below, Savers does not directly pay charities for donated non-clothing items despite still selling these goods in its stores for a profit.

Savers entered into contracts with six charitable organizations relating to the solicitation of charitable donations from donors in Minnesota.<sup>11</sup> Three of those charities either terminated or declined to renew their contracts with Savers soon after the Minnesota AGO issued a Compliance Report on November 24, 2014, highlighting the plethora of regulatory infractions involving Savers' fundraising activities in Minnesota.<sup>12</sup> On June 2, 2015, Disabled American Veterans, Department of Minnesota, Inc. ("DAV") settled the AGO's concerns about its arrangement with Savers.<sup>13</sup> The two other charities—Epilepsy Foundation of Minnesota, Inc.

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<sup>8</sup> See *id.*, Exs. 25, 26.

<sup>9</sup> See *id.*, Exs. 4-17.

<sup>10</sup> See, e.g., Ex. 8 (Schedule A).

<sup>11</sup> See *id.*, Exs. 4-17.

<sup>12</sup> *Id.*, Ex. 27.

<sup>13</sup> *Id.*, Ex. 28. Among many other things, DAV agreed in the settlement that it "shall confirm that [if Savers]...act[s] as professional fundraisers for DAV in Minnesota [it is] properly registered to act in this capacity with the Minnesota Attorney General's Office ("AGO") before allowing [it] to solicit contributions for [DAV] from Minnesota donors." *Id.*, ¶ 1.

("EFM") and Vietnam Veterans of America ("VVA")—have continued their relationships with Savers even though the company is not properly registered as a professional fundraiser in Minnesota for either charity. EFM and VVA are registered with the Minnesota AGO as charitable organizations, as defined by Minnesota law.<sup>14</sup>

**II. SAVERS' BUSINESS PRACTICES ILLUSTRATE THE PROBLEMS REGARDING ITS SOLICITATION OF CHARITABLE DONATIONS AS A PROFESSIONAL FUNDRAISER WITHOUT BEING PROPERLY REGISTERED WITH THE STATE.**

**A. Savers' Solicitation Practices Create the Aura that It is a Nonprofit Organization.**

At its stores, collection centers, and in its marketing campaigns, Savers widely capitalizes on the names, logos, and likenesses of the charitable organizations on whose behalf it solicits donated goods. It does so for two reasons: (1) to convince donors to donate merchandise, and (2) to convince donors to shop at its for-profit stores. This masks Savers' actual status as a for-profit entity that receives the lion's share of the value of donations people make. For years, Savers has taken pains to avoid disclosing its status as a professional fundraiser, instead suggesting that, like the charities, it too has a benevolent purpose.

Savers places the name of its store near the words "Community Donation Center" to create the appearance that Savers is itself a charitable enterprise. For example, attached as Exhibit 31 is a photograph taken at Savers' Valu Thrift store in Saint Paul.<sup>15</sup> The name Valu Thrift and Community Donation Center both appear on the awning of the storefront.<sup>16</sup>

Savers also placed donation drop spots in parking lots that similarly conflate its nature with that of a charitable organization. For example, one Savers drop spot in a grocery store

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<sup>14</sup> See *id.*, Exs. 29-30.

<sup>15</sup> *Id.*, Ex. 31.

<sup>16</sup> See *id.*

parking lot in White Bear Lake solicits donations for VVA, bears a picture of a soldier holding a young girl with a flag, and states: “Your donations of clothing and household items support *our community services*.”<sup>17</sup> At another donation drop spot in Apple Valley a collection pod solicited donations for charity, prominently bears Savers’ name and logo, and again states: “DO A WORLD OF GOOD...**donate**.” The signage again seeks donations of clothing and household items to “support *our community services*.”<sup>18</sup>

Savers’ marketing and solicitation materials also blur its mission and identity with that of a nonprofit charitable organization, and suggest that charities make money when the public buys things in its stores. For example, one Savers’ brochure repeatedly conflates Savers with the charities, stating “we partner with local nonprofits and pay them for all goods donated at our stores,” and “The more you donate *and shop* at Savers, the more the community benefits.”<sup>19</sup> Another similar brochure like states that “The more you donate *and shop* at Savers, Unique and Valu Thrift Store, the more your community benefits!”<sup>20</sup> Yet another Savers pamphlet that states “We’re in the business of **doing good**.”<sup>21</sup>

These signs and marketing materials have projected the image that Savers is a nonprofit charity, not a for-profit retailer, and further failed to disclose that it is a professional fundraiser despite such a disclosure being required by Minnesota law. *See* Minn. Stat. § 309.556, subd. 2 (stating “any professional fund-raiser soliciting contributions in this state shall...disclose [its] name...and that the solicitation is being conducted by a ‘professional fund-raiser.’”).

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<sup>17</sup> *Id.*, Ex. 22 (emphasis added).

<sup>18</sup> *Id.*, Ex. 26 (emphasis added).

<sup>19</sup> *Id.*, Ex. 32 (emphasis added).

<sup>20</sup> *Id.*, Ex. 33 (emphasis added).

<sup>21</sup> *Id.*, Ex. 34.

**B. Savers Falsely Tells Donors that Certain Donations Benefit the Charity of Their Choice When in Fact the Donation Benefits a Different Charity to Which the Donor Did Not Intend to Donate.**

Savers told the Minnesota AGO in an October 17, 2014 letter that “its long-standing practice is to designate the [on-site donations] at a particular store to benefit only one charity.” Despite directing all donations made at particular stores to a single charity, Savers has represented to donors that donations made to a particular store go to a different charity. For example, at the donation drop-off area outside the Savers store located in Apple Valley the signage solicits donations for both DAV and EFM.<sup>22</sup> As of October 1, 2014, however, Savers’ website stated that donated merchandise at the Apple Valley store exclusively benefited DAV.<sup>23</sup> At Savers’ Columbia Heights store donors were similarly told that donations made there will benefit DAV and EFM, but Savers website states all donations at the store will benefit only DAV.<sup>24</sup>

Other such examples abound. At Savers’ Woodbury store, it is DAV—not EFM—donors who are shortchanged. Savers’ signage stated that donations benefit both charities while its website states all donations go to EFM.<sup>25</sup> A Savers donation bin inside its Unique Thrift store in St. Paul stated that donations would benefit both VVA and the Lupus Foundation of Minnesota. Again, however, Savers website indicates all donations at the store go to VVA.<sup>26</sup>

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<sup>22</sup> *Id.*, Ex. 35.

<sup>23</sup> *Id.*, Ex. 3.

<sup>24</sup> *Id.*, Exs. 3, 25.

<sup>25</sup> *Id.*, Ex. 3, 36.

<sup>26</sup> *Id.*, Ex. 3, 37.

**C. Savers Does Not Directly Pay Charities for Non-Clothing Items Despite Telling Donors that “Every Donation” They Make Benefits Charity.**

Savers collects both clothing and non-clothing household goods—such as toys, books, small appliances, and furniture—from donors. Savers calls donations of goods other than clothing “brica,” which is short for bric-a-brac. In connection with its solicitation of other household goods (i.e., brica) on behalf of charities, Savers has prominently and repeatedly told Minnesota donors that it pays the charity “every time” they donate, or for “every donation,” or words to that effect, when it does not.

For example, one Savers’ brochure soliciting merchandise from Minnesota donors states that “**Donating** does a world of good” and that “Savers and Unique pay local nonprofits *every time* you donate.”<sup>27</sup> The brochure further tells Minnesota donors to “**Donate** today!” because Savers “partner[s] with local nonprofits and *pay[s] them for all the goods* donated at our stores.”<sup>28</sup> Another Savers flyer asks donors to donate and states “Donate and make a difference” and that “We pay local nonprofits *every time* you donate.”<sup>29</sup> Savers’ window signage states similarly, claiming that it “pays local nonprofits *every time* you donate. **Thank you!**”<sup>30</sup>

Savers materials makes these claims in regard to specific charities as well. For example, in one of Savers’ flyers it claims that it “pays the Epilepsy Foundation of Minnesota *every time* you donate.”<sup>31</sup> Savers used another similar flyer bearing VVA’s name and logo and stating that it “pays local nonprofits *every time* you donate.”<sup>32</sup>

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<sup>27</sup> *Id.*, Ex. 34. (emphasis added).

<sup>28</sup> *Id.* (emphasis added).

<sup>29</sup> *Id.*, Ex. 38 (emphasis added).

<sup>30</sup> *Id.*, Ex. 39 (emphasis added).

<sup>31</sup> *Id.*, Ex. 40 (emphasis added).

<sup>32</sup> *Id.*, Ex. 41 (emphasis added).

Savers does not directly pay charities for non-clothing items (i.e., brica) that donors donated to the charity. Indeed, Savers has expressly told the Minnesota AGO in an October 17, 2014 letter that it “did not and does not pay charities for brica.” Accordingly, if a donor donated a \$250 television by dropping it off at a Savers store, Savers would pay nothing directly to the charity as a result of the donation. A donor, however, has no way of knowing this. This and the other practices described above heighten the need for Savers to promptly comply with the state’s professional fundraiser registration laws before soliciting further donations in Minnesota.

**III. MINNESOTA’S CHARITABLE ORGANIZATION LAWS REQUIRE ALL PROFESSIONAL FUNDRAISERS TO REGISTER AND PUBLICLY DISCLOSE CERTAIN INFORMATION ABOUT THEIR FUNDRAISING ACTIVITIES TO PROMOTE DONOR AND PUBLIC TRANSPARENCY.**

Minnesota Statutes chapter 309 governs the activities of charitable organizations and their professional fundraisers in Minnesota. Most relevant here, Minnesota Statutes section 309.531 provides that no person or entity may solicit donations from donors in Minnesota unless it first registers with the Minnesota AGO and files with the State certain documents, authorizations, and notices.

The purpose of requiring professional fundraisers to register with the Minnesota AGO is to promote donor and public transparency into the business arrangement with the charity that hired them. This transparency enables donors and the public to determine, among other things, whether to donate and the extent to which their donation would benefit a charity versus a for-profit professional fundraiser. When such transparency is lacking, donors cannot distinguish worthwhile charities from those which spend most of donors’ donations on things other than the stated charitable purpose, such as payments to the charity’s for-profit professional fundraiser.

Minnesota Statutes section 309.531’s professional fundraiser registration requirements effectuate these sunshine principles in a number of different manners, including as follows:

**Section 309.531, subdivision 1**—Subdivision 1 states that “[n]o person shall act as a professional fund-raiser unless registered with the attorney general.” This registration filing must be submitted in writing, under oath, and on the form prescribed by the Minnesota AGO.

**Section 309.531, subdivision 2(b)**—Subdivision 2(b) requires filing with the Minnesota AGO a “solicitation notice” on a form prescribed by the Minnesota AGO that identifies: (i) the relevant contracts between the charity and the professional fundraiser, (ii) the dates on which the solicitation campaign will begin and end, (iii) each person responsible for directing and supervising the solicitation campaign, (iv) whether the professional fundraiser will at any time have custody of donations, (v) a description of the charitable programming at issue, and (vi) a certification from the charity that solicitation notice is true and complete.

**Section 309.531, subdivision 2(c)**—Subdivision 2(c) requires filing with the Minnesota AGO a copy of the contract between the professional fundraiser and each charity on whose behalf it is soliciting. Equally important, this provision requires contracts between professional fundraisers and charities to contain certain terms intended to enhance transparency into their business arrangement. All contracts must, among other things, clearly identify the percentage or a reasonable estimate of the percentage of the total amount solicited from each person that will be received by the charity for charitable purposes, as well as the services the professional fundraiser will provide to the charity.

**Section 309.531, subdivision 3**—Subdivision 3 requires written authorization from each charity on whose behalf a professional fundraiser is soliciting, signed by two officers of the charity, to be filed with the Minnesota AGO.

**Section 309.531, subdivision 4**—Subdivision 4 requires the filing with the Minnesota AGO, under oath and on forms prescribed by the Minnesota AGO, a report documenting each

past solicitation campaign that a professional fundraiser has undertaken on behalf of a charity. This financial report must include the gross revenue of the campaign and an itemization of all expenses incurred during the campaign. The financial report must be signed by an authorized official from both the charity and professional fundraiser certifying that it is true to the best of each one's knowledge.

**IV. SAVERS OPERATED AS AN UNREGISTERED PROFESSIONAL FUNDRAISER FOR YEARS, AND EVEN THOUGH THE STATE INFORMED IT MORE THAN SIX MONTHS AGO THAT IT MUST REGISTER UNDER SECTION 309.531, SAVERS HAS NOT PROPERLY DONE SO.**

**A. Savers Has Long Known that It has Been Unlawfully Acting as an Professional Fundraiser Yet Still Did Not Register Under Section 309.531.**

Savers has been acting as a professional fundraiser for EFM and VVA in Minnesota for years.<sup>33</sup> On November 24, 2014, the Minnesota AGO issued a Compliance Report identifying a multitude of deficiencies in Savers' solicitation practices in Minnesota.<sup>34</sup> One of the infractions identified in the report was that Savers was not registered as a professional fundraiser while it solicited donations in Minnesota.<sup>35</sup> Yet, in the intervening six months after the report was issued, Savers failed to bring itself in to compliance with Minnesota law and to properly register as a professional fundraiser. This is presumably because it is worried that disclosing to the donating public the details of its status as a for-profit enterprise and its fundraising activities would make donors aware of how, at best, only small a percentage of their donation actually benefits the charity (and in some cases, how the donation does not directly benefit the charity at all).

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<sup>33</sup> See *id.*, Exs. 7, 9.

<sup>34</sup> *Id.*, Ex. 42.

<sup>35</sup> See, e.g., *id.* at 52.

Despite acting as a professional fundraiser for years, Savers' never attempted to register under section 309.531 until December 30, 2014, one month after the Minnesota AGO issued its Compliance Report.<sup>36</sup> This submission ostensibly was to cover the remainder of the 2014-15 registration period in regard to EFM. It did not mention VVA. The submission consisted of only the four-page registration form and the bond required by section 309.531, subdivision 2(a), but none of the other materials required by law.<sup>37</sup> Among the required materials that were not included in this "registration" filing were the solicitation notice, Savers' contracts with the charities, written authorization for Savers to solicit on behalf of the charities, and any solicitation campaign financial reports for its past solicitation campaigns.<sup>38</sup> See Minn. Stat. § 309.531, subs. 2(b), 2(c), 3, and 4.

**B. The Minnesota AGO Provided Savers a Road Map About How to Properly Register as a Professional Fundraiser, Which It Ignored.**

The Minnesota AGO subsequently sent Savers an April 8, 2015 letter identifying point-by-point the "deficiencies in Savers' registration as a professional fundraiser."<sup>39</sup> The letter identified a number of items that Savers should have (but did not) provide with its December 30, 2014 submission, including:

- An "accurate and complete registration statement using a form prescribed by the" Minnesota AGO.<sup>40</sup>
- A "full and complete 'solicitation notice.'"<sup>41</sup>
- A copy of a contract with each "charitable organization for which [Savers] intends to solicit" that identifies "the percentage or a reasonable estimate...of the total

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<sup>36</sup> *Id.*, Ex. 43.

<sup>37</sup> *See id.*

<sup>38</sup> *See id.*

<sup>39</sup> *Id.*, Ex. 44.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

amount solicited...which shall be received by” the charity and the “services Savers shall provide to the charitable organization,” among other things.<sup>42</sup>

- “[W]ritten authorization from each charitable organization on whose behalf [Savers] solicits, which must be signed by two officers of each organization.”<sup>43</sup>
- “[A]ccurate reports for past campaigns” that “accurately itemize the gross revenue received from and expenses incurred in connection with a particular fundraising campaign.”<sup>44</sup>

All of these materials are required by section 309.531 in order for Savers to properly register as a professional fundraiser under Minnesota law. *See* Minn. Stat. § 309.531.

Savers did not respond to the deficiencies identified in the April 8<sup>th</sup> letter for more than a month. Then, on May 20, 2015 Savers made additional submissions regarding their professional fundraising activities in Minnesota for the 2015-16 time period for EFM.<sup>45</sup> Savers May 20<sup>th</sup> submission again did not reference VVA.<sup>46</sup> Savers—inexplicably—again submitted woefully deficient registration materials in regard to EFM.<sup>47</sup> Among the requisite materials that were not included in Savers May 20<sup>th</sup> “registration” filing were the solicitation notice, compliant contracts between Savers and the charities, written authorization for Savers to solicit on behalf of the charities, and solicitation campaign financial reports for its past solicitation campaigns in Minnesota.<sup>48</sup> The State initiated this enforcement action on May 21, 2015.

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*, Ex. 45.

<sup>46</sup> *See id.*

<sup>47</sup> *See id.*

<sup>48</sup> *See id.*

## ARGUMENT

Rule 65 of the Minnesota Rules of Civil Procedure provides that a “temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor.” Minn. R. Civ. P. 65.02. An injunction should be granted where failure to do so would “result in injury which it is the duty of the court to prevent.” Temporary injunctive relief is “within the district court’s broad discretion,” *Metro. Sport Facilities Comm’n v. Minn. Twins P’ship*, 638 N.W.2d 214, 220 (Minn. Ct. App. 2002), and will not be overturned absent a clear abuse of discretion. *State v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 571 (Minn. Ct. App. 2005).

**I. IN ENFORCING MINNESOTA’S CHARITABLE ORGANIZATION LAWS, THE STATE NEED ONLY MAKE A SHOWING THAT A STATUTORY VIOLATION HAS, IS, OR IS ABOUT TO OCCUR OR THAT INJUNCTIVE RELIEF WOULD FURTHER THE PUBLIC INTEREST.**

Minnesota Statutes section 309.57 expressly authorizes the State to seek injunctive relief for violations of Minnesota’s charitable organization laws. Section 309.57 states that in seeking injunctive relief “the attorney general shall not be required to establish irreparable harm but *only* a violation of statute *or* that the requested order promotes the public interest.” Minn. Stat. § 309.57, subd. 1 (emphasis added). Section 309.57 further provides that the “attorney general shall not be required to establish irreparable harm but only a violation of statute or that the requested order promotes the public interest” when seeking an injunction. Minnesota Statutes section 8.31, subdivision 3, also authorizes the State to enjoin impending unlawful conduct, stating that “the attorney general shall be entitled, on behalf of the state[,],...to sue for and have injunctive relief” if Minnesota law “has been or is being violated, or is about to be violated.” In other words, under section 309.57 (and section 8.31) the State may obtain an injunction without regard to the factors in *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314 (Minn. 1965).

The court of appeals has repeatedly acknowledged the State's broad authority to seek injunctive relief in an enforcement action, most recently in *State v. Cross Country Bank, Inc.*, 703 N.W.2d 562 (Minn. Ct. App. 2005). In discussing the Attorney General's duty as Minnesota's chief law enforcer, the court of appeals stated that "when injunctive relief is explicitly authorized by statute," as it is here, a "district court [is] not required to make findings on the *Dahlberg* factors to enjoin violation of the statute. The district court had only to consider whether the [S]tate showed that [defendants] violated or were about to violate the statutes involved and whether injunctive relief would fulfill the legislative purpose of the statutes." *Id.* at 572-73; *see also Wadena Implement Co. v. Deere & Co.*, 480 N.W.2d 383, 389 (Minn. Ct. App. 1992) (holding identically). "[W]hen the legislature has explicitly authorized the state to obtain injunctive relief to prevent violation of statutes that protect consumers, the legislature has obviated a showing of irreparable harm and inadequate legal remedy." *Cross Country Bank*, 703 N.W.2d at 573. Thus, in seeking to enforce Minnesota's charitable organization laws the State is entitled to an injunction upon a showing of either a past/current/impending violation *or* that the injunction would further the public interest.

**II. IT IS NOT DISPUTABLE THAT SAVERS FOR YEARS HAS BEEN ACTING AS "PROFESSIONAL FUND-RAISER" FOR EFM AND VVA BY SOLICITING DONATIONS OF CLOTHING AND OTHER HOUSEHOLD GOODS ON THEIR BEHALF AND USING THEIR NAMES TO SELL MERCHANDISE IN ITS RETAIL STORES.**

"No person shall act as a professional fund-raiser unless registered with the attorney general." Minn. Stat. § 309.531, subd. 1. Section 309.50, subdivision 6, defines a "professional fund-raiser" as "any person who for financial compensation or profit performs for a charitable organization<sup>49</sup> any service in connection with which contributions are, or will be, solicited"<sup>50</sup> or

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<sup>49</sup> EFM and VVA are "charitable organizations" under Minnesota law, *see* Minn. Stat. § 309.50, subd. 4, and are registered as such with the Minnesota AGO. *See* 6/3/15 Kremenak Aff., Exs. 28, 29, 30. Donors' donation of (Footnote Continued on Next Page)

“any person who for compensation or profit plans, manages, advises, consults, or prepares material for, or with respect to, the solicitation in this state of contributions for a charitable organization.” Savers, however, has been acting as a professional fundraiser for years in Minnesota for EFM and VVA without being registered.

**A. Undisputable Evidence Establishes that Savers has Acted as a “Professional Fund-Raiser” on Behalf of EFM.**

Savers has solicited contributions, in the form of donated clothing and other household goods, on EFM’s behalf and prominently juxtaposed EFM’s name and logo with that of Savers’ name and logo in its signage and solicitations. For example, in the primary store display window at Savers’ Minneapolis store it hung a sign designating the location as a “Community Donation Center,” stated that “Savers pays local nonprofits every time you donate” and further identified “Epilepsy Foundation of Minnesota” as the benefiting charity.<sup>51</sup> A donation drop-off bin inside Savers’ Woodbury store states “Savers Donation Drop Off—Clothing Books Housewares Toys” and juxtaposes this solicitation with EFM’s logo above the donation bin.<sup>52</sup>

Savers distributes sales literature using EFM’s name and logo to solicit donations as well. For example, one Savers’ flyer uses EFM’s name and logo (along with other charities) and states “Donating does a world of good,” “Donate today! Drop off your quality used clothing and household items at the locations listed below,” and then lists various Savers stores where it

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clothing and other household goods are “contributions” under Minnesota law because such donations are the “grant of...property” to the charities. *See* Minn. Stat. § 309.50, subd. 5.

<sup>50</sup> “Solicit” means “the request directly or indirectly for any contribution, regardless of which party initiates communication, on the plea or representation that such contribution will or may be used for any charitable purpose, and include any of the following methods of securing contributions...the use of the name of any charitable person in any offer or sale as an inducement or reason for purchasing any such item.” Minn. Stat. § 309.50, subd. 10. Thus, either requesting donations *or* using a charity’s name to sell merchandise are considered “solicitations.”

<sup>51</sup> *Id.*, Ex. 39.

<sup>52</sup> *Id.*, Ex. 46.

accepts donations.<sup>53</sup> Other Savers materials exclusively solicit donations on behalf of EFM, including one pamphlet that solicits donations of clothing, media, housewares, small appliances, and furniture and states “Savers pays the Epilepsy Foundation of Minnesota every time you donate.”<sup>54</sup>

Savers’ prior (deficient) attempts to register with the Minnesota AGO as a professional fundraiser for EFM concedes the applicability of section 309.531 to its fundraising activities on behalf of EFM.<sup>55</sup> Regardless, the above solicitations and other conduct by Savers—including using EFM’s name to promote the sale of its merchandise—renders it a “professional fundraiser” for EFM under section 309.50, subdivision 6.

As noted above, however, Savers has not complied with section 309.531 because its registration submission regarding EFM did not include a solicitation notice, a compliant contract between Savers and EFM, written authorization from EFM for Savers to solicit on its behalf, and solicitation campaign financial reports for its past solicitation campaigns in Minnesota on behalf of EFM.<sup>56</sup>

**B. Undisputable Evidence Establishes that Savers has Acted as a “Professional Fund-Raiser” on Behalf of VVA.**

Like EFM, Savers solicited contributions of clothing and other household goods on VVA’s behalf and prominently juxtaposed VVA’s name and logo with that of Savers’ name and logo in its solicitations. For example, at a donation drop spot in White Bear Lake, the donation bin states “donate here” and “donation drop spot” next to a depiction of VVA’s and Savers’

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<sup>53</sup> *Id.*, Ex. 34.

<sup>54</sup> *Id.*, Ex. 40.

<sup>55</sup> *See id.*, Exs. 43, 45.

<sup>56</sup> *See id.*

name and logo.<sup>57</sup> Another picture of a second donation bin at the same location says “Do a world of good...donate,” “Donation drop spot. Savers,” and then says “Accepting donations on behalf of: Vietnam Veterans of America.”<sup>58</sup>

Savers similarly features VVA’s name in marketing materials soliciting donations. For example, one Savers’ brochure states “Donating does a world of good,” “Donate today! Drop off your quality used clothing and household items at the locations listed below,” bears VVA’s name and logo, and then identifies various Savers stores where donors can donate.<sup>59</sup> Another brochure urges donors to donate at Savers’ Unique Thrift Store off of Rice Street in St. Paul says “Donate and Make a Difference!” and “Your donations benefit: Vietnam Veterans of America.”<sup>60</sup>

Savers’ solicitation of donations on VVA’s behalf and other conduct by Savers—including using VVA’s name to promote the sale of its merchandise—renders it a “professional fundraiser” for VVA under section 309.50, subdivision 6. Savers, however, has never even attempted to register as a professional fundraiser for VVA.<sup>61</sup>

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<sup>57</sup> *Id.*, Ex. 47.

<sup>58</sup> *Id.*, Ex. 22.

<sup>59</sup> *Id.*, Ex. 34.

<sup>60</sup> *Id.*, Ex. 41.

<sup>61</sup> *See id.*, Exs. 43, 45 (referencing only DAV and EFM in its “registration” filing). Defendant Apogee Retail, LLC, registered as a professional fundraiser to make calls potential Minnesota donors as it relates to picking up donations at their homes. Defendant TVI, Inc., d/b/a Savers, however, did not register despite using VVA’s name to solicit donations, *see id.*, Ex. 34, and collecting donations at donation drop spots. *See id.*, Exs. 22, 29.

**III. THE COURT SHOULD ENJOIN SAVERS FROM ACTING AS A UNREGISTERED PROFESSIONAL FUNDRAISER UNDER SECTION 309.57 BECAUSE SUCH CONDUCT IS UNLAWFUL, AND SEPARATELY, THE TRANSPARENCY-PROMOTING REGISTRATION REQUIREMENTS FURTHER THE PUBLIC INTEREST.**

**A. Savers Acting as a Professional Fundraiser on Behalf of EFM and VVA is Unlawful, and Should be Enjoined Under Section 309.57.**

It is not disputable that Savers has been acting as a “professional fund-raiser” for EFM and VVA in Minnesota.<sup>62</sup> Neither is it disputable that Savers has failed to submit to the Minnesota AGO the requisite, complete, and compliant documentation that satisfies its registration obligations.<sup>63</sup> Savers’ unregistered fundraising activities are unlawful under section 309.531. Minn. Stat. § 309.531, subd. 1 (“No person shall act as a professional fund-raiser unless registered with the attorney general.”) Under section 309.57, these circumstances are dispositive and the Court should enjoin Savers’ from soliciting donations in Minnesota unless and until it properly registers as a professional fundraiser, including submitting all the materials that are required by section 309.531.

**B. Savers’ Activities as an Unregistered Professional Fundraiser is Detrimental to the Public Interest Because It Conceals the Nature of Its Arrangement With the Charities in Contravention of Minnesota Law, and Should be Enjoined Pursuant to Section 309.57.**

Enjoining unlawful conduct, such as acting as an unregistered professional fundraiser, is in the public interest. This is a second, independent reason the Court should grant the State’s motion. As referenced above, the purpose of requiring professional fundraisers to register is to promote public and donor transparency into the arrangement with the charity that hired them. This transparency enables the public and donors to determine, among other things, whether to

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<sup>62</sup> See *supra* Argument Section II.

<sup>63</sup> See *id.*, Exs. 43, 45.

donate and the extent to which their donation would benefit a charity versus a for-profit professional fundraiser.

Savers for years has denied to the public and donors the transparency that they are entitled to under chapter 309, presumably because it knew that paying pennies on the dollar for donated clothing—and nothing directly for non-clothing goods—would contradict the benevolent veneer it has worked so hard to drape over its for-profit purposes. The Court should not allow Savers to cloak its dealings with the charities from public scrutiny any longer.

### **CONCLUSION**

For all of the above reasons, the State respectfully requests that the Court grant its motion to temporarily enjoin Savers from soliciting donations in Minnesota unless and until it has properly registered as a professional fundraiser with the State in regard to each charitable organization on whose behalf it is or will solicit contributions, as required by Minnesota law.

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Respectfully submitted,

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