In Winona, some homeowners are allowed to rent out their homes while others on the same block are not. This is because under its "30 percent rule" the city forbids more than 30 percent of the homes on a block in certain zoning districts from obtaining a rental license. Mankato (25 percent), Northfield (20 percent), and West St. Paul (10 percent), have similar ordinances. This unequal treatment violates the Minnesota Constitution. In addition, because the ordinance is a zoning law that regulates the ownership or occupancy of property, not its use, it is illegal under Minnesota's zoning enabling act.

The court of appeals upheld the constitutionality and legality of Winona's "30 percent rule." Under the court's ruling, Minnesota is now an outlier, both among states whose appellate courts have addressed the constitutionality of similar restrictions on the right to rent, and among states that have addressed whether zoning laws can exclude rental housing.

This Court should decide whether Minnesota will ignore the prevailing jurisprudence that protects the important and traditional right of renting out one's property, or whether Minnesota will protect property rights just as much as the overwhelming majority of states that have addressed similar laws.

STATEMENT OF LEGAL ISSUES RAISED BY THE PETITION

1. In 2005, the City of Winona adopted a zoning ordinance that forbids a homeowner from obtaining a rental license once 30 percent or more of her neighbors on her block have obtained rental licenses themselves. Several other state appellate courts have struck down similar laws under their own constitutions in equal protection and substantive due process challenges. Does depriving homeowners of the right to rent out their homes under the 30 percent rule violate Article I, §§ 2 or 7 of the Minnesota Constitution?

The court of appeals upheld the 30 percent rule under the Minnesota Constitution.

2. Appellate courts in at least a dozen other states have ruled that similar restrictions are zoning laws, and that they are illegal under their own zoning enabling acts because they regulate the ownership or occupancy of property, rather than its use. Is the 30 percent rule a zoning law? And if it is a zoning law, is it illegal under Minnesota's zoning enabling act?

The court of appeals upheld the 30 percent rule as a non-zoning police power measure without addressing if it is a zoning law or illegal.

STATEMENT OF THE CASE

In 2005, Winona adopted a zoning ordinance forbidding homeowners in certain zoning districts from obtaining rental licenses if their homes were on blocks where 30 percent or more of their neighbors

had already obtained licenses. A5, 7, 52-53. Plaintiffs are three Winona homeowners who have not been able to obtain rental licenses because of the 30 percent rule. A78-81, 85-88, 91-93. Each plaintiff suffered serious financial harm, with one, Ethan Dean, losing his house to his bank.[1] A80-83, 85-88, 92-96. Plaintiffs filed an action in October 2011, under the Uniform Declaratory Judgments Act, Minn. Stat. §§ 555.01, *et seq.*, and Art. I, § 8 of the Minnesota Constitution ("Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive . . ."), claiming the rule violated their equal protection and due process rights under the Minnesota Constitution, and was an illegal act exceeding the City's zoning powers under the zoning enabling act, Minn. Stat. § 462.357. A48, 64-73. Plaintiffs requested injunctive and declaratory relief and nominal damages. A73-74. The district court ruled Plaintiffs had standing to ask for nominal damages, but ruled against them on the merits. A33, 46. Plaintiffs appealed.

The court of appeals affirmed. In a published decision, it concluded that Winona has not treated Plaintiffs differently from their neighbors—despite the fact that some homeowners are denied licenses because others obtained licenses. A15-16. It also concluded that the rule is a valid non-zoning police power measure and explicitly refused to address if it is a zoning law that must conform to the zoning enabling act. A11.

Plaintiffs now ask this Court to determine whether Minnesota will depart from the overwhelming majority of courts addressing similar but less-restrictive rental bans, finding them unconstitutional under their own constitutions and illegal under their own zoning enabling acts. Plaintiffs ask for nominal damages. Their injunctive claims are moot because over the last two and a half years they have lost or sold their homes, or received a license, only after suffering serious financial harm. Because this case concerns questions of extraordinary public importance and statewide concern, it is not akin to private law cases merely involving a dispute between private parties that are dismissed because they only involve nominal damages. *See, e.g.*, *Smith v. Altier*, 184 Minn. 299, 301, 238 N.W. 479 (1931).

[1] Dean lost his home after the case was submitted to the district court. Further, after their home stood empty for almost four years, A88, Ted and Lauren Dzierzbicki just sold it on March 14, 2014.

ARGUMENT

An overwhelming majority of appellate courts in other states that have addressed whether similar restrictions on the right to rent are constitutional have struck them down.[2] With the court of appeal's opinion, that puts Minnesota among a distinct minority. This rejection of individual liberty is at odds with the heightened protections Minnesota provides for equal protection, requiring the government to provide actual evidence to justify a law. *See, e.g.*, *State v. Russell*. 477 N.W.2d 886 (Minn. 1991). This Court should accept review to consider whether Minnesota will have a different rule of law than other states on whether homeowners can be denied the right to provide safe housing to renters. *See, e.g.*, *Kirsch Holding Co.*, 281 A.2d at 519 (striking down ordinance forbidding most seasonal rentals).

Likewise, virtually every state appellate court to address the question has ruled that their zoning enabling acts only allow municipalities to zone to regulate the use of property, not its ownership or occupancy.[3] Nine of these cases were specifically in the context of zoning laws distinguishing between renter-occupied and owner-occupied property, with all finding the laws illegal because they regulated

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[2] **Restriction struck down:** *Coal. Advocating Legal Haus. Options v. City of Santa Monica,* 88 Cal. App. 4th 451, 463 (2d Dist. 2001); *College Area Renters & Landlords Assoc. v. City of San Diego*. 43 Cal. App. 4th 677 (4th Dist. 1996); *Gangemi v. Zoning Board of Appeals of Fairfield,* 763 A.2d 1011 (Conn. 2001); *Fox v. Town of Bay Harbor Islands,* 450 So. 2d 559, 561 (Fla. Ct. App. 1984); *O'Connor v. City of Moscow.* 202 P.2d 401, 404-05 (Idaho 1949); *Kirsch Holding Co. v. Borough of Manasquan,* 281 A.2d 513 (N.J.1971); *Ocean Cnty. Ed. of Realtors v. Twp. Of Long Beach,* 252 N.J. Super. 443, 447-48 (1991); *United Prop. Owners Ass'n. v. Belmar*, 447 A.2d 933 (N.J. Sup. Ct. 1982); *City of Wilmington v. Hill*, 657 S.E.2d 670, 672 (N.C. App. 2008).
Restriction upheld: *Lantos v. Zoning Hearing Board of Haverford Township*, 621 A.2d 1208, 1209-1210 (Pa. Commw. Ct. 1993); *Anderson v. Provo City Corp*. 108 P.3d 701, 706-707 (Utah 2005).

[3] *Miami Beach v. Arlen King Cole Condo. Ass'n, Inc.*, 302 So. 2d 777, 779 (Fla. App. 1974); *McHenry State Bank v. City of McHenry*, 446 N.E.2d 521, 525 (Ill. App. 1983); *Queen Anne's County v. Days Cove Reclamation Co.*, 713 A.2d 351, 362 (Md. Ct. Spec. App. 1998); *CHR General, Inc. v. City of Newton*, 439 N.E.2d 788, 791 (Mass. 1982) ("A 'fundamental principle of zoning [is that] it deals basically with the use, without regard to the ownership, of the property involved or who may be the operator of the use.'") (citation omitted); *Dearden v. Detroit*, 269 N.W.2d 139, 143 (Mich. 1978); *Seabrook v. Tra-Sea Corp.*, 410 A.2d 240, 244 (N.H. 1979); *Urban v. Manasquan*, 592 A.2d 240, 245 (N.J. 1991); *FGL & L Property Corp. v. Rye*, 485 N.E.2d 986, 989 (N.Y. 1985); *Graham Ct. Assocs. v. Chapel Hill*, 281 S.E.2d 418, 420 (N.C. App. 1981); *Kulak v. Bristol Township*, 563 A.2d 978, 980 (Pa. Commw. Ct. 1989); *Baker v. Town of Sullivan's Island*, 310 S.E.2d 433, 435 (S.C. App. 1983); *In re Appeal of Lowe*, 666 A.2d 1178, 1181 (Vt. 1995).

ownership or occupancy, not use.[4] Minnesota's zoning enabling act is materially the same as these states' acts. Unlike these states, this Court has never addressed whether ordinances that distinguish between rental and owner-occupied property, like Winona's, are zoning laws of a type not allowed in Minnesota.

The court of appeals did not grasp the complexity or implications of the zoning issue, Issue Two. The issue has two parts: (a) is the 30 percent rule a zoning law; and, (b) if so, is it illegal under the zoning enabling act? The court concluded that it did not matter if the rule is a zoning law because it is a valid non-zoning police power measure. A11. This was incorrect, and will sow confusion if not addressed. Zoning is an aspect of the police power; that is not disputed. Some ordinances are passed pursuant to the police power as zoning laws and some as non-zoning laws. But an ordinance cannot be both. *Zwiefelhofer v. Town of Cooks Valley*, 809 N.W.2d 362 (Wis. 2012) (whether ordinance was a zoning law or a non-zoning police power law determined if appeal could proceed). Otherwise, municipalities could avoid the specific restrictions the legislature places on their zoning powers, Minn. Stat. § 462.357, by simply labeling zoning rules non-zoning police power laws. *See Costley v. Caromin House, Inc*., 313 N.W.2d 21, 27 (Minn. 1981) (municipalities have no "inherent power to enact zoning regulations"). This, in fact, is what Winona tried in first adopting the 30 percent rule as a zoning ordinance and then, with no substantive changes, labeling it a non-zoning regulation after this lawsuit was filed. A7, 53.

Addressing whether the 30 percent rule is a zoning law and, if so, whether it is illegal under the zoning enabling act, will allow this Court to do two things. First, it can extend the analysis of *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 292 (2013), which addressed whether a law is "related to zoning" in the context of the 60-day rule (governing permit approvals), to the more fundamental question of what is, and is not, a law the zoning enabling act itself governs. Second, if the rule is a zoning law, this Court

[4] *Miami Beach*, 302 So. 2d at 779; *McHenry State Bank*, 446 N.E.2d at 525; *CHR General, Inc.*, 439 N.E.2d at 791; *Urban*, 592 A.2d at 245; *FGL & L Property Corp.*, 485 N.E.2d at 989; *Graham Ct. Assocs.*, 281 S.E.2d at 420; *Kulak*, 563 A.2d at 980; *Baker*, 310 S.E.2d at 435; *In re Appeal of Lowe*, 666 A.2d at 1181. *See also* 5 Rathkopf's The Law of Zoning & Planning § 81.7 (4th ed. 2011) ("The principle that zoning enabling acts authorize local regulation of 'land use' and not regulation of the 'identity or status' of owners or persons who occupy the land **would likely be held to apply to invalidate zoning provisions distinguishing between owner-occupied and rental housing**." (emphasis added))

can address whether Winona has passed a zoning law of a type not allowed under the zoning enabling act.

Review of this case is appropriate under four of the criteria of Minn. R. Civ. App. P. 117, subd. 2. First, the question presented is an important one which this Court should decide. *Id.*, subd. 2(a). Whether an individual can be forbidden from renting out his property when the property itself is for tenants implicates a central property right. Other state courts have held similar but less burdensome rental restrictions to be unconstitutional. This Court should now decide whether Minnesota will follow their lead or let the court of appeals' decision leave Minnesota among a distinct minority.

Second, a decision by this Court calls for the application of new legal principles. *Id.*, subd. 2(d)(1). Winona excludes renters, but not owners, from certain properties for reasons that have nothing to do with the renters' health and safety. This Court has not addressed whether municipalities can exclude renters, other than to protect them from unsafe houses and landlords. It also has not addressed whether the zoning enabling act allows zoning to regulate the ownership or occupancy, not use, of property.

Third, a decision by this Court will have a statewide impact. *Id.*, subd. 2(d)(2). The 30 percent rule is a new mechanism that restricts rentals based on what individuals' neighbors are doing. And, although new, the mechanism is rapidly proliferating throughout Minnesota with Mankato, Northfield, and West. St. Paul enacting 25 percent, 20 percent, and 10 percent rules, respectively. *See* A97-100.

Fourth, the questions presented are certain to recur unless resolved by this Court. Minn. R. Civ. App. P. 117, subd. 2(d)(3). Homeowners often find they need to rent out their property, sometimes unexpectedly. People often need to move to a new city or out of state for a variety of reasons such as to take a new job, to care for a sick loved one, or to get married and start a family. This requires a homeowner to either sell her home, which can be extremely difficult if she is underwater or the market is soft, or to rent it out to pay the mortgage. This happens every day to homeowners across the state.

In summary, this case presents issues of first impression in Minnesota concerning a new mechanism for restricting property rights which will affect many Minnesota homeowners until it is decided by this Court. It satisfies the criteria of Rule 117, and Plaintiffs therefore ask this Court to hear this important case.

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Respectfully submitted,

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Anthony B. Sanders (No. 0387307)
Katelynn McBride (No. 0392637)
Lee U. McGrath (No. 0341502)
INSTITUTE FOR JUSTICE
527 Marquette Avenue
Suite 1600
Minneapolis, Minnesota 55403-1330
Telephone: (612) 435-3451

Attorneys for Petitioners