

STATE OF MINNESOTA  
COUNTY OF WINONA

DISTRICT COURT  
THIRD JUDICIAL DISTRICT

CASE TYPE: Other Civil

Ethan Dean, Holly Richard, Ted  
Dzierzbicki, and Lauren Dzierzbicki,

Plaintiffs,

**Court File No.**

v.

City of Winona, a municipality,

Defendant.

**CIVIL RIGHTS COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

### **INTRODUCTION**

1. This is a civil rights action to vindicate the rights of homeowners. Renting out one's home to someone else is a legitimate and historical exercise of one's property rights. The City of Winona, however, has enacted an arbitrary and irrational rental ban. Only 30% of homeowners on almost every city block can acquire rental licenses. The fortunate few who secure those licenses are allowed to rent out their homes, if they so wish. The rest are left standing with potentially empty houses that they can neither rent nor, often, sell.

2. Plaintiffs Ethan Dean, Holly Richard, and Ted and Lauren Dzierzbicki each own one home in Winona. Each also has a mortgage on their home. For different reasons they or their families can no longer live in their Winona homes. As a consequence, they are trying to sell them and have had them on the market for some time. Through the luck of the draw, all of their homes are on blocks where more than 30% of their neighbors on those blocks already have rental licenses. Therefore, it is unlawful for them to rent their homes out, and any potential buyer would also be denied the right to rent the same home out. This prohibition has so far prevented Plaintiffs from selling their homes.

3. In a time of plummeting housing values and widespread foreclosures the City of Winona is enforcing a law that makes the housing crisis in the city even worse. Plaintiffs pray that this Court strike down this unconstitutional and illegal rental ban and return to the people of Winona the fundamental right to rent out their homes.

### **Jurisdiction, Venue, and Parties**

4. Plaintiffs seek to vindicate their rights under Sections 2 and 7 of Article 1 of the Minnesota Constitution and to have Winona's "30% rule" (also referred to herein as the "rental ban") declared *ultra vires*.

5. Plaintiffs seek declaratory and injunctive relief as hereinafter alleged against Defendant pursuant to Section 8 of Article 1 of the Minnesota Constitution, Minn. Stat. §§ 555.01, 555.02, and 555.08, and other applicable law.

6. This Court has jurisdiction over this matter pursuant to Minn. Stat. § 484.01, and venue is proper in Minnesota's Third Judicial District Court for Winona County.

7. Plaintiff Ethan Dean owns a house in Winona at 64 West Wabasha. Dean is a police and corrections trainer for the United States Department of Defense. Dean has served his country through four tours of duty in Iraq and a current tour in Afghanistan. This has left him away from his home for long periods of time.

8. Plaintiff Holly Richard owns a house in Winona at 410 East Sanborn. Richard lived in Winona for much of her childhood, attended Winona State University, and later purchased her Winona home when she worked for St. Mary's University in Winona. She currently lives in Vermillion, South Dakota where she is pursuing a PhD at the University of South Dakota.

9. Plaintiffs Ted and Lauren Dzierzbicki, a married couple, jointly own a house in Winona at 64 East Wabasha. They live in Cary, Illinois. They purchased their Winona house for their daughter to live in while she attended Winona State University. Their daughter graduated in Spring 2010 and moved away, leaving the house vacant.

10. Plaintiffs' three houses are all subject to Winona's "rental ban" or "30% rule." As none of their houses were certified as rental properties prior to the rule's passage in 2005, and as over 30% of the lots on each property's block have rental licenses, it is unlawful for Plaintiffs to rent out their houses.

11. Dean and Richard have each obtained short-term exemptions to the rental ban, but the ordinance allowing for the exceptions will sunset in April 2012. Further, the exemptions are not transferable to subsequent owners.

12. The City of Winona is a municipality governed by the laws of Minnesota.

### **Winona Residential Housing Regulations and the Lead-Up to the Rental Ban**

13. For decades, Winona has required owners of all residential properties (with certain exceptions that do not apply to Plaintiffs) to obtain rental housing licenses (herein referred to as "rental licenses") for their properties before they can be rented out. Before the City will issue a rental license for a property (or "certify" a property), the property must comply with the safety requirements in Chapter 33A of the Winona Code (the "rental housing code"). The rental housing code itself does not require anything further than these safety requirements: "The building official or housing inspector *shall* issue a rental housing license for each dwelling, dwelling unit or rooming unit, when upon inspection finds such unit meets or exceeds the minimum requirements set forth by this chapter." Winona Code § 33A.03(b) (emphasis added).

14. The rental licensing requirement applies to properties where a resident pays the owner rent for the right to live there, including owner-occupied properties where a person rents a room from the owner.

15. Until 2004 any owner of a residential property could obtain a rental license as long as the property met the minimum safety requirements in the rental housing code. Licenses were issued without regard to what the neighbors of the property did with their own properties. As long as the property was considered safe, individuals and families could pay rent to the owner for the right to live there.

16. In 2004 the city council placed a moratorium on issuing new rental licenses. The moratorium lasted one year, forbidding the City from issuing any new rental licenses, and therefore making it unlawful for any homeowners to rent out their homes if they had not already acquired rental licenses. Existing licenses that expired during the moratorium, however, could be and were renewed.

17. During the moratorium the City Council enacted legal changes, purportedly to address perceived problems in the neighborhoods surrounding Winona State University. These perceived problems were excessive on-street parking, antisocial behavior committed by college students, and deteriorating housing conditions.

18. The legal changes included lowering the number of unrelated people who can live in a rental property, lowering the number of roomers or boarders that owner-occupants can rent rooms to, requiring two off-street parking spaces for every rental property, and limiting the number of rental licenses to 30% of the properties on a block.

19. This action only concerns the last legal change, the rental ban.

## The Rental Ban and Its Consequences

20. The language constituting the rental ban is found in Winona’s zoning code at § 43.58.2(A)(6). Under that subsection a “rental unit” is a “permitted use” in the Rural Residential (“R-R”) District subject to a limitation that no more than 30% of the properties on any block obtain rental licenses:

A. Permitted Uses. The following uses shall be permitted in the R-R District:

\* \* \*

6. Rental units, provided that no more than 30 percent (rounded up) of the residentially-zoned lots on any block shall be eligible to obtain certification as a rental property, including homes in which roomers and/or boarders are taken in by a resident family. For the purposes of this rule, state-licensed residential facilities are not considered rental properties. When determining the number of eligible properties on a block, the number shall be the lowest number that results in 30 percent or more of the residential lots being rental.<sup>1</sup>

21. All other residential zoning districts, in turn, incorporate most “permitted uses” allowed in the R-R District, including rental units subject to the same 30% limitation. In this way, the rental ban applies to all blocks in residential zoning districts on a block-by-block basis. The one exception is the R-3 District—the “Multifamily residence district”—which is exempted from the rental ban. Winona Code § 43.58(a)(1). The rental ban also does not apply in business districts and manufacturing districts.

---

<sup>1</sup> In computing exactly what the maximum is for how many properties may be certified on a block, Winona Code § 43.58.2(A)(6) also includes this chart:

| <b>Lots</b> | <b>Rental</b> |
|-------------|---------------|-------------|---------------|-------------|---------------|-------------|---------------|-------------|---------------|
| 1-3         | 1             | 21-23       | 7             | 41-43       | 13            | 61-63       | 19            | 81-83       | 25            |
| 4-6         | 2             | 24-26       | 8             | 44-46       | 14            | 64-66       | 20            | 84-86       | 26            |
| 7-10        | 3             | 27-30       | 9             | 47-50       | 15            | 67-70       | 21            | 87-90       | 27            |
| 11-13       | 4             | 31-33       | 10            | 51-53       | 16            | 71-73       | 22            | 91-93       | 28            |
| 14-16       | 5             | 34-36       | 11            | 54-56       | 17            | 74-76       | 23            | 94-96       | 29            |
| 17-20       | 6             | 37-40       | 12            | 57-60       | 18            | 77-80       | 24            | 97-100      | 30            |

22. Under the rental ban, once 30% of the properties on a block obtain rental licenses no other properties on that block may receive a rental license. Rental licenses obtained before the rental ban was enacted, however, were “grandfathered in.” Therefore, blocks that were at or above 30% as of the adoption of the rule can indefinitely remain at or above 30% as long as the “grandfathered” licenses are renewed. Rental licenses, including those that were “grandfathered in,” expire after five years but can be renewed. Winona Code §33A.03(c).

23. When a block is split between exempt and non-exempt zoning districts then only the lots on the block that are covered by the rental ban are considered in the 30% calculation. Winona Code § 43.58.2(A)(6).

24. Although owner-occupants renting to roomers and/or boarders were at first exempted from the rental ban, in February 2006 the City Council amended its ordinances to apply the ban to those properties as well.

25. If a Winona homeowner, such as Plaintiffs, owns a home on a block with 30% or more of the properties certified as rentals, but does not have their own home certified, they cannot rent out their home. If they find they have to move away they cannot obtain a renter while they are gone. This is true whether they plan to return or not. If they have a mortgage on the house it is unlawful for them to receive any rental income from their house to cover the mortgage payments. The same is true of property taxes and other house-related expenses. For these people, one traditional form of insurance against foreclosure—renting your house out—no longer exists.

26. Because the rental ban applies to current and future owners of affected properties, the rule drastically affects the owners’ ability to sell their houses. This is because the only

market for these homes are potential owners who plan to live in the home and who cannot see any scenario in which they will ever want to rent out any part of their homes.

27. The fact that a property can be rented out often greatly enhances its value and the interest of potential buyers. Plaintiffs' homes have been shown many times. However, almost all interested buyers of Plaintiffs' houses lose interest once they find the properties cannot be rented out.

28. The rental ban applies to all properties in covered zoning districts, regardless of who the tenants are. It does not matter whether the tenants are college students, families, elderly couples, spinsters, refugees, missionaries or foreign businessmen.

29. As the rental ban restricts, by definition, the supply of rental properties, but does not affect the demand for rental housing, the rental ban puts upward pressure on the market price for rental housing. This restricts the supply of affordable housing for low income individuals and families. For example, the current tenants in Plaintiff Richard's house, a young family, had trouble finding a house to rent in Winona that they could afford.

30. Not only is the rental ban a drastic limitation on owners' property rights but it encourages neighbors to pit themselves against each other. Under the rental housing code, and under the City's practices and policies, owners can obtain rental licenses even if they are not currently renting their houses out or have any definite plans to rent them out.

31. Since the rental ban was adopted, some owner-occupants have obtained rental licenses not because they foresee renting out their properties in the near term, but simply because they want to increase their own houses' property value and/or to make it so that their neighbors on the same block cannot rent their own houses out. Many Winona blocks had just under 30% rental licenses when the rental ban was adopted. A number of them have subsequently gone over

30% because a homeowner, who did not subsequently rent the house out, obtained the necessary one permit to push the block over 30%. Many other blocks are one or two rental licenses away from exceeding the 30% limit.

32. Very few, if any, holders of rental licenses fail to renew them when they come up for renewal every five years. With the rental ban in place, failing to renew a license means the property could lose tens of thousands of dollars in value or become impossible to sell.

33. The City Council has never granted a variance to a property owner who wanted to acquire a standard five-year rental license when the property was ineligible to be certified because of the rental ban. The only rental licenses it has allowed which would otherwise violate the rental ban are short-term exemptions of no more than one year that are non-transferable.

34. Plaintiffs' Winona homes all comply, or substantially comply, with the requirements of the rental housing code, Winona Code Chapter 33A.

35. All three of Plaintiffs' homes are similar to other homes on their own blocks, and to other homes on nearby blocks where less than 30% of the homes have rental licenses.

36. The City has already found Plaintiffs Dean and Richard's properties to substantially comply with the requirements of the rental housing code when they were issued temporary licenses.

### **The Rental Ban's Harm inflicted on Plaintiffs**

#### ***Ethan Dean***

37. Plaintiff Ethan Dean's Winona home is surrounded by rental properties. For purposes of the rental ban his "block" is actually a half-block consisting of the south half of the block with Broadway to its north, Wabasha to its south, Main to its west, and Center to its east. The north half of the block is in the exempt R-3 District. The north half includes at least one

single-family home that lacks a rental license, but because of its placement on the block it could get one without having to worry about the rental ban. Thus, if Dean's home were approximately 100 feet farther north he would be able to rent it out. On Dean's half of the block seven of the nine properties have rental licenses, or 78%. The percentage is so high because the licenses were grandfathered in.

38. Dean first learned of the rental ban when he decided to sell his house.

39. Dean needed income to pay his mortgage while he was serving his country in Iraq because his house was not selling. He therefore applied to the City Council for an exemption from the rental ban under a short-term ordinance. The ordinance was passed in April 2009 but ceased to be law in April 2010. An exemption would only have been made if (1) the property were certifiable as a rental property but for the rental ban (i.e., it met the standards of the rental housing code), (2) the property were for sale, (3) the property were leased for no more than 12 months, and (4) the property were only leased to a family. The exemption was not transferable to a buyer of the property. Dean was granted this short-term exemption. Only two other people were granted such exemptions under the same ordinance. One of them is co-Plaintiff Holly Richard.

40. Dean continues to be unable to sell his home. In April 2011 the City Council passed a nearly identical version of the ordinance passed in April 2009. Dean was granted an exemption under this current ordinance in April 2011. Once again, however, the ordinance will cease to be law after one year, in April 2012. Thus, he has received short-term exemptions, but there is no way under existing law for him to receive another. Further, he has never received an exemption that would allow him to transfer a rental license to a buyer of his home.

41. Dean currently has a renter in his home but when that lease terminates at the end of May 2012 it will be unlawful for him to continue to rent it out and the renter will have to leave.

42. Dean continues to pay his mortgage, insurance, and property taxes on his Winona home. Given his financial situation, if he is unable to rent out his Winona home he may be faced with possible foreclosure.

43. Dean's Winona home has continuously been on the market since 2009. He has never received an offer to buy it.

44. Dean has made significant efforts to try and sell his home. He has a realtor who is actively marketing his home. A "for sale" sign is displayed at the house, the house is listed in for sale listings, and it has been shown at least twenty times. However, potential buyers routinely lose interest when they learn that the house is not rental-certified and cannot be because of the rental ban. Thus, Dean continues to be unable to sell his Winona home.

45. Because of the rental ban any buyer of Dean's Winona home would be unable to rent the house out.

46. The block across the street from Dean's house has three lots, none of which have rental licenses. If his home were located across the street he would be able to acquire a standard rental permit and either rent his home indefinitely or sell it.

***Holly Richard***

47. Holly Richard purchased her Winona home in 2006 when she worked at St. Mary's University in Winona. Her home is approximately eight blocks from the WSU campus, making it less attractive to students than properties directly next to campus. Consequently, on many of the blocks in her neighborhood less than 30% of the lots have rental licenses.

48. At the time she purchased her home her block was also less than 30% rental, and she could have applied for and obtained a license for her house. As she planned to live in her home for some time she did not do this.

49. Subsequently, one of Richard's neighbors on her same block had their home certified as a rental. This pushed Richard's block "above 30%" and extinguished her ability to get a rental license and rent out her home.

50. Richard was unaware of the rental ban or that her neighbor had taken the last available rental license on her block. In 2008, she decided that her best opportunity to advance her career was the pursuit of a graduate degree at a school outside of Winona. She put her house on the market, but as of Fall 2009 it had not sold. Faced with a mortgage and a potentially empty home, she then entered into a contract to sell the house on a lease-to-own basis.

51. The City learned about her lease-to-own tenant in February 2010, claimed it counted as a rental, fined her \$100 for violating the rental ban, and threatened additional fines for every day her tenant continued to live in her house. This forced her tenant to move out, rescinding the lease-to-own contract. Then, although she asked the City for advice on how to proceed, it at first failed to inform her of the short-term exemption she actually did qualify for, the exemption Plaintiff Ethan Dean would later receive. Instead, the City's first piece of advice was for her to knock on the doors of neighbors on her block to see if they would give up a rental license so that she could apply for one.

52. In spite of the City's behavior, Richard eventually did learn of the short-term exemption ordinance and was able to secure the right to rent her house out on a short-term basis. She currently rents out her house to a family, but a different tenant from the one who lived there before who had contracted to buy the house.

53. After receiving the short-term exemption, Richard continued to be unable to sell her home.

54. She later applied for and received the right to continue to rent out her home in April 2011 when the exemption ordinance was reenacted.

55. A family is still renting Richard's home but when that lease terminates in April 2012 it will be unlawful for her to continue to rent it out and the tenants will have to leave.

56. Richard continues to pay her mortgage, insurance, and property taxes on her Winona home. Given her financial situation, if she is unable to rent out her Winona home she may be faced with possible foreclosure.

57. Richard's Winona home has continuously been on the market since early 2010. She has never received an offer to buy it.

58. Richard has made significant efforts to try and sell her home. She has a realtor who is actively marketing her home. A "for sale" sign is displayed at the house, the house is listed in for sale listings, and it has been shown over a dozen times. However, potential buyers routinely lose interest when they learn that the house is not rental-certified and cannot be because of the rental ban. Thus, Richard continues to be unable to sell her Winona home.

59. Because of the rental ban any buyer of Richard's Winona home would be unable to rent the house out.

60. The block across the street from Richard's house has 15 lots, only four of which have rental licenses. If her home were located across the street she would be able to acquire a standard rental permit and either rent her home out indefinitely or sell it.

***Ted and Lauren Dzierzbicki***

61. Ted and Lauren Dzierzbicki live in Cary, Illinois. In 2007 their daughter moved to Winona and began attending WSU. To pay for her housing expenses and make her feel more involved with her Winona community, the Dzierzbickis purchased a house near campus. Their plan was to have their daughter live in the house and also rent it out to other students attending college.

62. The Dzierzbickis spent at least \$40,000 renovating the house. Then, satisfied that the house would qualify for a rental license, a few weeks before the Fall 2007 semester was to begin they agreed to leases with some women attending WSU. They then applied for a license.

63. The City's building inspector then informed them that their house was ineligible for a license because of the rental ban. This was the first time the Dzierzbickis had heard of the ban.

64. The City told then told the Dzierzbickis that the tenants who they had already leased the house to could stay in the house if they did not pay rent. The City also told the Dzierzbickis, however, that they could require the tenants to pay utilities.

65. The Dzierzbickis' daughter and their tenants continued living in the house for over two years, not paying any rent, but paying utilities. Then, in contradiction to its previous statement, the City sent the Dzierzbickis a letter stating that they were unlawfully allowing the tenants to live in the house (even though none of them were paying rent) and required them to move out. The Dzierzbickis then reluctantly forced everyone except their daughter to move out, the last leaving in January 2010.

66. The Dzierzbickis' daughter graduated from WSU in May 2010. Since then the house has sat vacant. The Dzierzbickis visit the property periodically to make sure it is kept in good condition, and a helpful neighbor keeps an eye on it, but it goes completely unused.

67. The Dzierzbickis' Winona home is surrounded by rental-certified properties. Like Ethan Dean's home, for purposes of the rental ban their "block" is actually a half-block consisting of the south half of the block with Broadway to its north, Wabasha to its south, Center to its west, and Lafayette to its east. The north half of the block is in the exempt R-3 District. The north half includes single-family homes that lack rental licenses, but because of their placement on the block could obtain licenses without having to worry about the rental ban. Thus, if the Dzierzbickis' home were approximately 100 feet farther north they would be able to rent it out. On the Dzierzbickis' half of the block all of the seven properties have rental licenses except theirs, or 86%. The percentage is so high because the licenses were grandfathered in.

68. The Dzierzbickis continue to pay their mortgage, insurance, and property taxes for their Winona house, plus utilities.

69. The Dzierzbickis' Winona home has continuously been on the market since December 2009. They have never received an offer to buy it.

70. The Dzierzbickis have made significant efforts to try and sell their home. They placed their Winona house on the market before their daughter graduated. They have a realtor who is actively marketing the home. A "for sale" sign is displayed at the house, the house is listed in for sale listings, and it has been shown at least twenty times. However, potential buyers routinely lose interest when they learn that the house is not rental-certified and cannot be because of the rental ban. Thus, they are unable to sell their Winona home.

71. Because of the rental ban any buyer of the Dzierzbickis' Winona home would be unable to rent the house out.

72. One block to the east of the Dzierzbickis' Winona house is another half-block that is a "block" for purposes of the rental ban. The half-block has eight lots, only two of which have rental licenses. If the Dzierzbickis' home were located on this block, one block away, they would be able to acquire a standard rental permit and either rent their home out or sell it.

### **COUNT I**

#### **THE RENTAL BAN VIOLATES PLAINTIFFS' EQUAL PROTECTION RIGHTS GUARANTEED UNDER ARTICLE I, SECTION 2 OF THE MINNESOTA CONSTITUTION**

73. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 72 collectively as paragraph 73 of this Count.

74. Article I, Section 2 of the Minnesota Constitution, the Rights and Privileges Clause, provides in relevant part:

No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.

75. Article I, Section 2 of the Minnesota Constitution guarantees the right of equal protection under the law. It requires the government to treat similarly-situated individuals alike.

76. The City's rental ban denies Plaintiffs their right to equal protection guaranteed by the Minnesota Constitution. They are forbidden from obtaining rental licenses for their Winona homes and renting their homes out, or selling their Winona homes to buyers who themselves could acquire licenses and rent out the properties. Meanwhile, owners of similar homes on other blocks, including within the same zoning district and even across the street, can obtain rental licenses and rent their homes out, and can sell their homes to buyers who

themselves could acquire licenses and rent out the properties. Furthermore, owners of similar homes on the same block who had acquired licenses either before the rental ban went into effect or before the block went over 30%, can rent their homes out, and can sell their homes to buyers who could themselves rent the properties out.

77. The distinction which separates those who cannot rent their homes out because of the rental ban from those who can rent their homes out is manifestly arbitrary and fanciful and is not genuine and substantial. The distinction is solely whether a homeowner is unlucky enough to be surrounded by too many neighbors—but only neighbors on the same block or half-block—who have previously obtained rental licenses. Whether a homeowner's neighbors have actually rented their properties out is irrelevant to whether a homeowner is forbidden from renting out his home, as is what his neighbors on other blocks are doing with their homes.

78. The distinction is not a natural and reasonable basis to justify the rental ban, and the rental ban is not adapted to peculiar conditions and needs.

79. There is no evident connection between the distinctive needs peculiar to those who can obtain rental licenses and rent their homes out and those who could but for the rental ban. Homeowners on blocks that are less than 30% rental—such as those across the street from Dean's or Richard's homes, the next block over from Richard's or the Dzierzbickis' homes, or on the same block (but different zoning district) from Dean's and the Dzierzbickis' homes—do not have needs that are different from homeowners who could obtain rental licenses but for the rental ban.

80. The rental ban's asserted purposes—excessive on-street parking, antisocial behavior committed by college students, and deteriorating housing conditions—are not purposes

Winona can legitimately attempt to achieve through the rental ban. Existing and long-accepted police powers are a much more direct and effective method of dealing with those problems.

81. Forbidding homeowners from renting their homes out to any renters whatsoever—whether or not they are in college, have criminal records, are of a certain age, own a car, etc.—in almost all neighborhoods in the city if they are unlucky enough to live on a block where 30% of their neighbors acquire rental licenses, does not address the rental ban’s asserted purposes, nor does it further any other legitimate governmental interest. All it does is create a perverse incentive for homeowners to acquire rental licenses at the expense of their neighbors and deny the remaining homeowners the right to rent their homes out, or, often, the ability to sell their homes.

82. Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the irreparable harm to their constitutional rights caused or imminently threatened by the rental ban, as well as the irreparable harms of the inability to sell their properties, loss of rental income, long periods of time in which no one can live in their properties and care for them, and possible foreclosure.

83. Unless the rental ban is declared unconstitutional both facially and as applied to Plaintiffs, and the City, its agents, employees, servants and representatives, are permanently enjoined from enforcing the rental ban, Plaintiffs will continue to suffer, and be imminently threatened by, great and irreparable harm consisting of the deprivation of their rights guaranteed by Article I, Section 2 of the Minnesota Constitution, as well as the irreparable harms of the inability to sell their properties, loss of rental income, long periods of time in which no one can live in their properties and care for them, and possible foreclosure.

## COUNT II

### **THE RENTAL BAN VIOLATES PLAINTIFFS' SUBSTANTIVE RIGHTS UNDER THE DUE PROCESS CLAUSE OF ARTICLE I, SECTION 7 OF THE MINNESOTA CONSTITUTION**

84. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 83 collectively as paragraph 84 of this Count.

85. Article I, Section 7 of the Minnesota Constitution, the Due Process Clause, provides in relevant part:

No person shall be . . . deprived of life, liberty or property without due process of law . . .

86. The Minnesota Constitution's Due Process Clause guarantees substantive rights, including the right to establish a home and the right of property owners to rent their property to others.

87. The City's rental ban arbitrarily and irrationally deprives Plaintiffs of their rights protected by the Minnesota Constitution's Due Process Clause. It arbitrarily and irrationally forbids Plaintiffs from renting their houses out to others, allowing prospective tenants to establish a home in Plaintiffs' Winona houses in exchange for the payment of rent.

88. The City's rental ban does not further a legitimate governmental interest. All it does is create a perverse incentive for homeowners to acquire rental licenses at the expense of their neighbors and deny the remaining homeowners the right to rent their homes out.

89. Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the irreparable harm to their constitutional rights caused or imminently threatened by the rental ban, as well as the irreparable harms of the inability to sell their

properties, loss of rental income, long periods of time in which no one can live in their properties and care for them, and possible foreclosure.

90. Unless the rental ban is declared unconstitutional both facially and as applied to Plaintiffs, and the City, its agents, employees, servants and representatives, are permanently enjoined from enforcing the rental ban, Plaintiffs will continue to suffer, and be imminently threatened by, great and irreparable harm consisting of the deprivation of their rights guaranteed by Article I, Section 7 of the Minnesota Constitution, as well as the irreparable harms of the inability to sell their properties, loss of rental income, long periods of time in which no one can live in their properties and care for them, and possible foreclosure.

### **COUNT III**

#### **THE RENTAL BAN VIOLATES PLAINTIFFS' PROCEDURAL DUE PROCESS RIGHTS GUARANTEED UNDER ARTICLE I, SECTION 7 OF THE MINNESOTA CONSTITUTION**

91. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 90 collectively as paragraph 91 of this Count.

92. The rental ban violates Plaintiffs' procedural due process rights guaranteed under Article I, Section 7 of the Minnesota Constitution by unconstitutionally delegating authority to Plaintiffs' neighbors.

93. Under the rental ban, a property owner's neighbors can create restrictions on the property rights of the property owner. The rental ban ordinance, as well as the City's practices and policies in implementing the ban, provide no guidelines and fail to specify the acceptable reasons for applying for a rental license.

94. As implemented, homeowners can seek and receive rental licenses for a variety of reasons. They include: because the applicant wants to rent out his home; because the applicant

wants to raise his home's property value by securing the right to rent out his home before the block goes above 30% rental licensed; or because the applicant wants to make it so that his neighbors cannot rent out their homes by seizing one of the few rental licenses available and pushing his block closer to, or above, 30% rental-licensed. This constitutes a standardless delegation of the property rights of Winona homeowners to a limited group of property owners who happen to obtain rental licenses first.

95. Prior to the rental ban Plaintiffs' properties could have been legally rented out. After the rental ban went into effect the actions of Plaintiffs' neighbors made it unlawful for the Plaintiffs' properties to be rented out. All of Plaintiffs' neighbors on the same block that had rental licenses before the rental ban was adopted have subsequently renewed those licenses. The acts of Plaintiffs' neighbors, as enabled by the new ordinance, created a restriction that did not exist before.

96. The rental ban ordinance alone could not have impacted Plaintiffs' property rights without the actions of Plaintiffs' neighbors in applying for, and/or renewing, their own rental licenses.

97. Some homeowners in Winona have acquired rental licenses since the rental ban was put into effect and subsequently not rented their homes out. Instead, they have acquired the licenses in order to raise their own property values and/or to make it so that their neighbors cannot rent out their homes.

98. Allowing for Plaintiffs' property rights to be subject to the decisions of their neighbors is an arbitrary and irrational violation of Plaintiffs' rights to procedural due process.

99. Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the irreparable harm to their constitutional rights caused or imminently

threatened by the rental ban, as well as the irreparable harms of the inability to sell their properties, loss of rental income, long periods of time in which no one can live in their properties and care for them, and possible foreclosure.

100. Unless the rental ban is declared unconstitutional both facially and as applied to Plaintiffs, and the City, its agents, employees, servants and representatives, are permanently enjoined from enforcing the rental ban, Plaintiffs will continue to suffer, and be imminently threatened by, great and irreparable harm consisting of the deprivation of their rights guaranteed by Article I, Section 7 of the Minnesota Constitution, as well as the irreparable harms of the inability to sell their properties, loss of rental income, long periods of time in which no one can live in their properties and care for them, and possible foreclosure.

#### COUNT IV

#### **THE RENTAL BAN IS AN *ULTRA VIRES* ACT BY THE CITY OF WINONA BECAUSE IT EXCEEDS THE POWER DELEGATED TO IT BY THE MINNESOTA LEGISLATURE**

101. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 100 collectively as paragraph 101 of this Count.

102. In adopting and enforcing the rental ban against Plaintiffs, Winona has acted *ultra vires*. It has no authority under state law to adopt or enforce the rental ban.

103. The City of Winona can only exercise governmental power to the extent that power is delegated to it by the Minnesota Legislature. This includes zoning powers.

104. Minnesota Statutes Chapter 462 defines the extent of the zoning power of municipalities such as Winona. Section 462.357 states municipalities have authority to “regulate . . . the uses of buildings and structures for trade, industry, residence, recreation, public activities,

or other purposes.” Such regulations must be “uniform for each class or kind of buildings, structures, or land and for each class or kind of use throughout such district.”

105. Minn. Stat. § 462.357 and other Minnesota zoning statutes only allow municipalities such as Winona to regulate uses of property but not the owner, operators or occupants of property.

106. A fundamental principle of zoning is that it concerns land use, not the owner, operators or occupants of the land. This is true in Minnesota just as it is true elsewhere.

107. The conversion of property from owner-occupied property to rental property is a change in the operators and occupants of property and not a change of use. Both owners and renters use the land as residential property; they are simply individuals living in the homes. Therefore, forbidding property owners from renting out their homes is beyond the scope of permissible zoning regulation.

108. By forbidding no more than 30% of properties on a block to be legally rented out, Winona is regulating through the zoning power whom the operator and/or the occupant of the property is.

109. Plaintiffs can legally live at their Winona homes but no one else can as long as they pay rent, or even pay utilities.

110. In using the rental ban to forbid Plaintiffs from renting out their homes Winona is acting beyond its authority, and thus acting *ultra vires*.

111. Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the irreparable harm caused or imminently threatened by the rental ban, including the inability to sell their properties, loss of rental income, long periods of time in which

no one can live in their properties and care for them, possible foreclosure, and violations of their constitutional rights.

112. Unless the rental ban is declared *ultra vires*, and the City, its agents, employees, servants and representatives, are permanently enjoined from enforcing the rental ban, Plaintiffs will continue to suffer, and be imminently threatened by, great and irreparable harm, including the inability to sell their properties, loss of rental income, long periods of time in which no one can live in their properties and care for them, possible foreclosure, and violations of their constitutional rights.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare unconstitutional as a violation of Plaintiffs' equal protection rights under Article I, Section 2 of the Minnesota Constitution the City of Winona's limitation of the number of rental licenses on a city block that homeowners can obtain and the actions of the City in applying and enforcing the rental ban against Plaintiffs and others similarly situated as heretofore alleged;

B. Declare unconstitutional as a violation of Plaintiffs' substantive rights guaranteed under the Due Process Clause of Article I, Section 7 of the Minnesota Constitution the City of Winona's limitation of the number of rental licenses on a city block that homeowners can obtain and the actions of the City in applying and enforcing the rental ban against Plaintiffs and others similarly situated as heretofore alleged;

C. Declare unconstitutional as a violation of Plaintiffs' procedural due process rights under Article I, Section 7 of the Minnesota Constitution the City of Winona's limitation of the number of rental licenses on a block that homeowners can obtain and the actions of the City in

applying and enforcing the rental ban against Plaintiffs and others similarly situated as heretofore alleged;

D. Declare *ultra vires* the City of Winona's limitation of the number of rental licenses on a block that homeowners can obtain and the actions of the City in applying and enforcing the rental ban against Plaintiffs and others similarly situated as heretofore alleged;

E. Permanently enjoin the City, its agents, employees, servants and representatives from applying and enforcing the rental ban against Plaintiffs and others similarly situated as heretofore alleged;

F. Award Plaintiffs nominal damages of \$1.00 for violations of their constitutional rights;

G. Award Plaintiffs their attorneys' fees and costs; and;

H. Award such other relief as the Court deems just, equitable, and proper.

Dated this 25th day of October, 2011.

---

Lee McGrath (MN Bar No. 0341502)  
Anthony B. Sanders (MN Bar No. 0387307)  
Katelynn K. McBride\* (IL Bar No. 6304905)  
INSTITUTE FOR JUSTICE  
MINNESOTA CHAPTER  
527 Marquette Ave., Suite 1600  
Minneapolis, Minnesota 55402  
Tel: (612) 435-3451  
Fax: (612) 435-5875  
Email: lmgrath@ij.org, asanders@ij.org,  
kmcbride@ij.org

\*Application for Admission *Pro Hac Vice* to be Filed.