

## Who has the right to rent their home? Minnesota high court will decide

By Tom Steward  
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ST. PAUL, Minn. — Minnesota cities have circled the wagons in a controversial property rights case pitting municipal authorities against homeowners who are challenging the constitutionality of Winona’s rental ban before the Minnesota Supreme Court.

Mankato, Rochester and St. Paul joined the League of Minnesota Cities in urging the state’s top court to uphold Winona’s law allowing no more than 30 percent of homeowners per block to rent their property in the college community.

“Now and into the uncertain future, Minnesota cities need to be able to use all of the ‘tools’ within their authority, including the ability to limit the number of rental units, to fulfill their obligations to their citizens,” Mankato City Attorney Eileen Wells wrote in a friend of the court filing.

Winona implemented the nation’s first comprehensive [rental cap](#) <sup>[2]</sup> ordinance in 2006. The city responded to concerns over neighborhoods with single-family homes being converted to rental properties catering to college students that can lead to complaints over parking, noisy parties and other issues.

Since [property owners](#) <sup>[3]</sup> with rental units were grandfathered in under the 30-percent rule, the number of property owners able to legally rent their houses varies widely from block to block.

After being denied rental licenses granted many of their neighbors, three property owners sued Winona in 2011 for denying their fundamental property rights.

“If enough neighbors have already obtained licenses, a law-abiding homeowner cannot rent a room to a law-abiding roommate, or find a law-abiding tenant to cover her mortgage while she tries to sell her house or temporarily moves away,” the Institute for Justice wrote in legal briefs filed on behalf of the property owners. “It pits neighbors against each other in a scramble for artificially limited property rights.”

At least four Minnesota cities have rental prohibitions on the books, including Mankato, St. Paul, West St. Paul and Winona.

“If adopted by the Supreme Court, this departure would have broad and negative consequences for the residents of the City of Saint Paul and elsewhere in Minnesota, far beyond the issue of rental housing in Winona,” St. Paul City Attorney Sara Grewing and Assistant City Attorney Gerald Hendrickson said in court documents.

The most emphatic defense on behalf of local governments, however, came from a city that does not have a rental prohibition on the books — so far. The city of Rochester’s brief makes the case that local governments need to keep rental bans as an option in their tool box.

“Winona should be encouraged and applauded for its experimentation with innovative and novel concepts designed to find solutions for municipal issues,” wrote Rochester City Attorney Terry Adkins. “This court should protect, not impair, the power of Minnesota cities to find new ways of doing business in this rapidly changing political, social, and economic environment.”

Both [district and state appeals court judges](#) <sup>[4]</sup> previously ruled in favor of the city’s authority to impose the 30-percent restriction. But the state Supreme Court will get the final say on the extent to which cities can limit one of the most fundamental property rights — the right to rent out your home.

“The whole point of a constitution is you take some tools out of the tool box that the government can’t use. It shows that cities just want to maximize the power they have, regardless of whether or not they should have that power,” said Anthony Sanders, an Institute for Justice attorney on the case.

All three [property owners](#) <sup>[6]</sup> continue to fight the city, despite losing thousands of dollars in rental income and changing circumstances. Ethan Dean lost his home to foreclosure. Holly Richard was mistakenly refused a rental license by the city for two years. After their house stood empty and unrented for four years, Ted and Lauren Dzierzbicki finally sold it.

In a sign of national interest in the outcome, the libertarian CATO Institute issued a friend of the court brief in support of the property owners.

“Municipalities like Winona certainly have the right — and the duty — to address quality-of-life issues in their communities. But the methods employed cannot unconstitutionally strip citizens of their fundamental right to use and enjoy property and thereby reduce the value of their properties, to the detriment of both owners and the community,” CATO wrote in its court filing.