FILED
United States Court of Appeals
Tenth Circuit

October 13, 2023

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

VAN SANT & CO.,

Plaintiff - Appellant,

v.

TOWN OF CALHAN, a Colorado municipality; CAMERON CHAUSSEE; TYLER CHAUSSEE; BRENT CHAUSSEE; CONTINENTAL PROPERTIES, INC.; VIDEO PRODUCTIONS INC.; DOMINION DEVELOPMENT, INC.; ANNETTE CHAUSSEE; CALVIN CHAUSSEE, II; BLAKE CHAUSSEE,

Defendants - Appellees.

No. 22-1190

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:20-CV-03035-RBJ)

Thomas P. McMahon, Jones & Keller, P.C., Denver, Colorado, and Benjamin P. Wieck, GSL Trial Lawyers, Glendale, Colorado, appearing for Appellant.

Marni Nathan Kloster (Nicholas C. Poppe, with her on the brief), Nathan Dumm & Mayer P.C., Denver, Colorado, appearing for Appellees Town of Calhan, Cameron Chaussee, Tyler Chaussee, and Brent Chaussee.

Erik R. Neusch, Neusch Law, LLC, Denver, Colorado (David C. Fawley, Allman, Mitzner & Fawley, LLC, Denver, Colorado, with him on the brief), appearing for Appellees Continental Properties, Inc., Video Productions, Inc., Dominion Development, Inc., Annette Chaussee, Calvin Chaussee II, and Blake Chaussee.

Before **ROSSMAN**, **KELLY**, and **BRISCOE**, Circuit Judges.

BRISCOE, Circuit Judge.

Plaintiff Van Sant & Co. (Van Sant) has owned and operated a mobile home park in Calhan, Colorado, for a number of years. In 2018, Van Sant began to publicly explore the possibility of converting its mobile home park to an RV park. In October 2018, Calhan adopted an ordinance that imposed regulations on the development of new RV parks, but also included a grandfather clause that effectively exempted the two existing RV parks in Calhan, one of which was connected to the grandparents of two members of Calhan's Board of Trustees (Board) who voted in favor of the new RV park regulations.

Van Sant subsequently filed this action against Calhan, several members of its Board, the owners of one of the existing RV parks, and other related individuals. Van Sant asserted antitrust claims under the Sherman Act, as well as substantive due process and equal protection claims under 42 U.S.C. § 1983. The defendants moved for summary judgment. The district court granted those motions in their entirety. Van Sant now appeals from those rulings. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm the judgment of the district court.

I

Factual background

a) The Town defendants

Calhan (Calhan or the Town) is a Colorado municipality organized as a statutory town pursuant to Colo. Rev. Stat. § 31-1-203(1). Calhan, which has a population of approximately 700, is located thirty-five miles northeast of Colorado Springs. Calhan is administered by a Board of Trustees (Board) consisting of a Mayor and six Trustees. Calhan has a Planning and Development Committee (PAD) that advises the Board on urban planning and land use issues.

Cameron Chaussee is a former Mayor of Calhan. Tyler Chaussee is a former member of the Board of Trustees for Calhan. Brent Chaussee is a former member of the PAD.

b) The plaintiff

Van Sant is a Colorado corporation that is solely owned by an individual named Thomas Brierton. Van Sant owns real property located at 1350 Eighth Street in Calhan. Van Sant's property in Calhan "was developed as a mobile home park circa 1974 and later expanded in 1995." Aplt. App., Vol. 1 at 272. "The property is 5.76 acres and in 2008 contained 33 mobile home pads or sites." *Id*. Prior to 2019, the property operated under the name Prairie View Mobile Home Park (Prairie View).

Before 2015, Van Sant operated Prairie View exclusively as a mobile home park. In the fall of 2015, however, Van Sant began also renting a few lots at Prairie

View to recreational vehicles (RVs). At that time, Calhan's Land Development Code (Code) did not specifically regulate RVs or otherwise prohibit RVs in mobile home parks.

c) Cadillac Jack's RV Park

Cadillac Jack's RV Park, which opened in the mid to late 1980s, is located at 1001 5th Street in Calhan and is composed of five acres of property and forty RV sites. Cadillac Jack's is managed solely by Calvin Chaussee, II (Calvin). Calvin and his wife, Annette Chaussee (Annette), who are residents of Calhan, are the parents of Brent Chaussee and Blake Chaussee, and the grandparents of Tyler Chaussee and Cameron Chaussee. Calvin and Annette characterize Cadillac Jack's as a "mom-and-pop operation that does not have or maintain annual financial statements, balance sheets, income statements, cash flow statements or statements of shareholder equity." *Id*., Vol. 2 at 370. Cadillac Jack's RV Park does not permit manufactured or mobile homes on its property.

Cadillac Jack's is owned by Video Productions, Inc. (Video Productions), a Missouri corporation authorized to transact business in Colorado. Video Productions was originally owned by Annette Chaussee. In March 1990, Annette Chaussee established the AMC Video Trust and transferred all of her interest in Video Productions to that trust. The AMC Video Trust documents contain conflicting statements about who the beneficiary of the trust is. Some of the trust documents list the principal beneficiary of the AMC Video Trust as the Antique and Toy Museum, Inc., a non-profit organization. Other trust documents, however, list Calvin as the

principal beneficiary, with all of Annette's descendants as beneficiaries upon the deaths of Annette and Calvin. In addition, there are also conflicting trust and estate planning documents that purport to give all interest in Video Productions to Blake Chaussee upon the deaths of Annette and Calvin. Finally, there is a conflicting trust document that purported, effective July 2019, to transfer all shares in Video Productions to Annette and Blake Chaussee as joint tenants.

The land where Cadillac Jack's operates is owned by Continental Properties, Inc. (Continental), an Iowa corporation authorized to transact business in Colorado. Prior to June 7, 1990, Annette was the sole shareholder of Continental. On or about June 7, 1990, Annette transferred all of her shares in Continental to an entity she created called the AMC Family Trust. On that same day, Annette "instructed that upon the sale of any assets the trustee" of the AMC Family Trust "must establish a financial educational program for children ages 12–18." *Id*., Vol. 3 at 832.

Dominion Development, Inc. (Dominion), a Delaware corporation authorized to transact business in Colorado, owns a storage building on the property where Cadillac Jack's operates. Dominion is owned in part by the AMC Family Trust.

d) Jolly RV Park

Jolly RV Park is a second RV park that operates in Calhan. Jolly RV Park is owned and operated by an individual named Calvin Jolly. Calvin Jolly began operating the Jolly RV Park in or around 2015. The Jolly RV Park is comprised of approximately seven acres, with twenty-seven full hook-up RV spaces and one additional RV space with partial hook-ups. Calvin Jolly has no familial relationship

with the Chaussee family, nor does he have any personal or financial interest in any businesses or properties owned by members of the Chaussee family. Like Cadillac Jack's RV Park, Jolly RV Park does not permit manufactured or mobile homes on its property.

e) The Board's and PAD's discussion and adoption in 2015 and 2016 of zoning regulations for RVs and RV parks

During a regular meeting held on May 11, 2015, the Board discussed "concerns about the appearance of the town." *Id*., Vol. 1 at 201. The suggestion was made that the "[b]est way to clean it up [wa]s [through] zoning." *Id*. The Board concluded that Calhan "need[ed] a re-vamp of code enforcement with some system in place to enforce it." *Id*.

On October 7, 2015, the PAD held a regularly scheduled meeting and discussed the issue of zoning and whether it would "give the town more leverage." *Id*. at 203. The PAD concluded that Calhan would "have to have zoning eventually," but was uncertain if "now [was] the time." *Id*. Ultimately, the PAD did not vote on the issue of zoning at the meeting.

The 2016 version of the Calhan Municipal Code included a definition of "Recreational Vehicle" that provided as follows:

> RECREATIONAL VEHICLE (RV) means a vehicular or portable unit mounted on a chassis and wheels, which either has its own motive power or is mounted on or drawn by another vehicle, such as travel trailers, fifth wheel trailers, camping trailers, or motor homes, but excluding truck campers. A recreational vehicle is not designed or intended for use as a permanent dwelling or sleeping place, but is to provide temporary living quarters for recreational, camping, or travel use.

Id. at 273.

On March 2, 2016, the PAD met and discussed a proposed new land development code for Calhan. On April 6, 2016, the PAD met again and recommended approving the land development code. "With the new code," the PAD noted, "all current RV's w[ould] have to meet standards." *Id*., Vol. 3 at 671. The PAD also noted that it "need[ed] documentation of what [RVs]" currently existed, so that it would "know if . . . a new RV [wa]s brought in." *Id*.

At a regularly scheduled meeting on April 11, 2016, the Board reviewed a report from the PAD regarding Calhan's land development code and, in particular, the presence of RVs in mobile home parks. During the executive session portion of the meeting, the Board voted unanimously to approve Ordinance 2016-09, which prohibited RVs in mobile home parks and did not include a grandfathering option for existing mobile home parks such as Prairie View.

f) Prairie View's Code violations

On February 12, 2016, representatives from Calhan "conducted an on-site inspection" of Prairie View "to determine individual lot owners' compliance with the Town's Water and Wastewater Regulations." *Id*., Vol. 3 at 676. "During the inspection," the Town's representatives "identified some of the mobile homes or [RVs] situated on certain lots . . . to be in violation of various provisions of the Town Code." *Id*. Further, the Town's representatives "identified waste materials,

including garbage, junk, and inoperable vehicles improperly stored or accumulated on the grounds of" Prairie View. *Id*.

With respect to the Code violations, the inspection "revealed four . . . lots having potentially improper water connections to the Town's potable water system." *Id*. This included two lots that "ha[d] a direct tap connection to a yard hydrant without any backflow prevention device or assembly," and two other lots that "ha[d] water supply connections with no backflow prevention device or assembly installed." *Id*. All four lots "had no meters, leading the Town to conclude that each individual lot [wa]s receiving water service through an unauthorized by-pass." *Id*. Calhan deemed each of these "structure[s] to be a nuisance." *Id*. at 677. "The inspection" also "revealed nine . . . lots as having potentially improper connections to the Town's wastewater system and/or insufficient exterior line protection measures." *Id*. at 678. Finally, "[t]he inspection also revealed several inoperable vehicles located on [the] property," "lime and soil deposits accumulating" on one lot," "junk and litter . . . present throughout the grounds of the Mobile Home Park," and several RVs parked on the premises that "were discharging wastewater directly onto the surface of the Mobile Home Park grounds." *Id*. "Based on these findings, the Town . . . determined the Mobile Home Park to be a 'blighted property,' as that term [wa]s defined in Section 13-1-010 of the Town Code." *Id*.

On August 9, 2016, Calhan issued a formal notice of violation (NOV) to Prairie View regarding the Code violations. Calhan also issued NOVs to occupants of the lots involved in certain of the violations.

On March 27, 2017, Calhan's police department issued a municipal summons to Van Sant for violating § 15.08.020(H)(7) of Calhan's Town Code, which prohibited RVs within manufactured home parks.[1] The summons listed a violation date of October 25, 2016 and a court date of April 11, 2017.

On April 18, 2017, Calhan issued a summons to Van Sant, charging it with the same violation, i.e., "Recreational Vehicles or R.V.s not Permitted in Manufactured Home Parks." *Id*. at 810. The summons indicated that on April 3, 2017, the chief of the Calhan police department was conducting routine patrol duties at Prairie View and observed "a large silver Airstream R.V. parked in Lot 2." *Id*. at 811.

On April 26, 2018, Van Sant was charged a third time with violating § 15.08.020(H)(7) of the Town Code, i.e., "Recreational Vehicles Not Permitted in a Manufactured Home Park." *Id*. at 817.

On August 28, 2018, Calhan and Van Sant entered into a stipulated settlement agreement under which Van Sant agreed to plead guilty to the April 26, 2018 charge.[2] *Id*. at 818. According to Van Sant, the municipal court judge who accepted the guilty plea instructed Van Sant to, on or before October 30, 2018, send letters to all Prairie View tenants notifying them of the reclassification of Prairie View to an RV park and allowing the tenants 180 days to vacate the premises. *Id*. at 820.

[1] We assume, based on the record, that Ordinance 2016-09 became § 15.08.020(H)(7) of Calhan's Town Code.

[2] It is unclear from the record how the 2016 and 2017 code violations were resolved.

g) The Board's consideration and adoption in 2018 of ordinances pertaining to RVs and RV Parks

On January 8, 2018, the Board adopted Ordinance 2018-01. The ordinance amended § 11.05.040 of the Calhan Municipal Code and was intended to restrict overnight parking of vehicles designed for temporary living. The ordinance stated, in relevant part, that "it shall be unlawful to park a motor home, camper trailer, camper coach, or recreational vehicle overnight on public property or on the public right-of-way, where such vehicle is being used for temporary living or residential purposes." *Id*., Vol. 1 at 224.

On March 12, 2018, the Board held a regularly scheduled meeting. Brierton, the owner of Van Sant, appeared at the meeting, stated that he was "[d]oing a lot of work at the park to get rid of the junk" and "getting people out," and "[w]ant[ed] to talk to the [B]oard about changing the use from mobile home park to RV park." *Id*., Vol. 2 at 560 n.11. Brierton asked the Board about "the process" of doing so. *Id*.

On March 27, 2018, the Board held a special meeting and adopted Ordinance 2018-05, which included a "[c]larifying definition of Manufactured Home Park." *Id*., Vol. 1 at 218. Specifically, Ordinance 2018-05 defined a "Manufactured Home Park" as "any tract of land held under single ownership or unified control upon which is located two (2) or more manufactured or mobile homes, or combination thereof, which are used, available or designed for residential occupancy, whether or not a fee is charged for use of the property." *Id*. at 226. The ordinance also effectively "prohibit[ed] recreational vehicles and older mobile homes on such parcels regardless

of whether there [we]re two or more mobile homes or manufactured homes on such parcel." *Id*. The stated purpose of the ordinance was "to treat parcels with mobile homes and parcels with manufactured homes equally by prohibiting older mobile homes and recreational vehicles from both such parcels." *Id*. at 238. Because Van Sant's property had more than two mobile homes on it at the time Ordinance 2018-05 was adopted, Van Sant's property became legally classified under the ordinance as a "mobile home park." *Id*., Vol. 1 at 183.

During a regularly scheduled meeting on May 14, 2018, the Board discussed "Ordinance 2018-07," which "restrict[ed] overnight parking of RV's." *Id*. at 220. In doing so, the Board also "[d]iscussed Prairie View Mobile Home Park and how [the ordinance] w[ould] affect them." *Id*. Ultimately, the Board voted unanimously to adopt Ordinance 2018-07.

During 2018, Calhan's clerk, Cindy Tompkins, received at least two inquiries regarding new RV parks in Calhan. Those inquiries prompted Tompkins to question whether Calhan needed regulations related to RV parks, and she in turn brought this issue to the attention of the Board in September 2018. The Board in turn referred the issue to the PAD. Tompkins assisted the PAD by gathering regulations for RV parks from other Colorado counties and municipalities.

In August and September 2018, James Kin, an attorney representing Van Sant, and Jeff Parker, the attorney for Calhan, exchanged emails regarding Van Sant's interest in converting Prairie View to an RV park. In an email dated September 6, 2018, Parker told Kin that "[t]he Town does not have formal zone districts" or "a

process for reviewing applications to develop property into an RV park." *Id*., Vol. 3 at 821. "Consequently," Parker stated, "your client is currently able to establish an RV Park on its property in the Town without specific approval of the Town." *Id*. Parker emphasized, however, that the Town did have in place "regulations that affect RV parks," and he specifically discussed some of them, including the one that prohibited RVs in manufactured home parks, another one that "limit[ed] the placement of RVs in the floodplain," the Town's "Development Standards and Supplemental Regulations" that apply to all commercial property, and building height limitations, and drainage and utility requirements. *Id*. at 821–22. Parker also advised Kin that "[d]epending on your clients' [sic] water and sewer demands, your client may need to obtain expanded water and/or sewer service from the Town." *Id*. at 822. Lastly, Parker stated:

> As a note, the Town has recently received a number of inquiries concerning the establishment of RV Parks in Town. The Board of Trustees may be considering some specific RV Park regulations in the future. So, your client may want to stay aware of the potential for future regulations that could apply to its planned park.

Id.

On October 9, 2018, the Board, including Cameron Chaussee, who was still the mayor, and Tyler Chaussee, held a regularly scheduled meeting. During the meeting, the Board noted that the PAD met on October 3, 2018 to discuss "RV park regulations" and reviewed "some regulations from another county and a couple of other towns." *Id*., Vol. 1 at 240. The PAD proposed that the Board adopt a set of RV park regulations similar to those used by another county in Colorado. The Board

discussed RV park regulations, noted that Calhan "ha[d] no [existing] regulations concerning [RV] parks," and concluded that "such regulations ha[d] become necessary due to the influx of [RV] parks within the town limits of Calhan." *Id*. at 183, 227. The Board ultimately passed Ordinance 2018-13 by a 3-0 vote (with one abstention) of those present. Two of the three votes cast in favor of the ordinance were from Cameron Chaussee and Tyler Chaussee.

Ordinance 2018-13 "add[ed] a new definition of "Recreational Vehicle (RV) Park" that read:

> RECREATIONAL VEHICLE (RV) PARK means any tract of land held under single ownership or unified control upon which one (1) or more recreational vehicles may be located, whether or not a fee is charged for use of the property; provided that property used primarily for parking or storing unoccupied recreational vehicles shall not constitute a recreational vehicle park.

Id. at 227. Ordinance 2018-13 also amended Chapter 15 of the Calhan Municipal Code to add a new Article 10, titled "RECREATIONAL VEHICLE PARK DEVELOPMENT." *Id*. The stated purpose of Article 10 was "to provide standards for RV Parks to identify to applicants the requirements of the Town of Calhan for RV Parks and to facilitate the creation of high quality RV Park projects." *Id*. at 228. Article 10 included sections that addressed "Minimum facilities for Recreational Vehicle Spaces," "Easements, Rights-of-Way, Public Open Space and Common Areas," "Driveways," "Walkways," "Maintenance," "Water Supply and Distribution," "Fire Protection," "Electrical Distribution and Communication Wiring," "Service Building," "Supervision," and "Grandfathering." *Id*. at 228–34.

All of these sections appear intended to impose minimal health and safety standards for RV Parks. The Grandfathering section, numbered Section 15.10.130, stated: "This section shall apply to all new Recreational Vehicle Parks after November 30, 2018. All Parks in existence as of the date of this ordinance shall adhere to the new regulations only upon any expansion or renovation of existing facilities." *Id*. at 234.

At the time Article 10 was enacted and became effective, Prairie View contained approximately sixteen manufactured or mobile homes and was therefore classified under Chapter 15 as a Manufactured Home Park. Consequently, Prairie View was not considered an RV "Park[] in existence as of the date of th[e] [RV] ordinance" and was therefore required to comply with the new RV park regulations to the extent it intended to convert its operation to an RV park. *Id*.

There is no evidence that Tompkins spoke with Annette, Calvin, or Blake Chaussee at any time regarding the new RV ordinance. There is also no evidence that either Annette or Calvin Chaussee had any discussions with Cameron, Tyler, or Brent Chaussee about the new RV ordinance. Finally, there is no evidence that either Cadillac Jack's or Jolly RV Park significantly raised prices, controlled the long-term RV rental price, or that the quality of services decreased after passage of the new RV ordinance.

A former resident of Prairie View, Ramona Houser, alleges that at some point in the summer of 2017, she had a conversation with Calvin Chaussee at his antique store and that Calvin Chaussee said to her, "I hope Calhan passes an ordinance that all RVs have to be in an RV park." *Id*. at 621–23. Houser alleged in a declaration

that she "believe[d] that Calvin was running people out of town . . . by using his influence with the Town's Board of Trustees." *Id*. at 667–68.

h) Van Sant's actions following the Board's passage of the RV ordinance

On October 2, 2019, Van Sant sent a letter to the Board and Tompkins asserting that Prairie View "was reclassified as an RV Park on or before October 9, 2018." *Id*., Vol. 3 at 820.

On October 29, 2018, Van Sant notified its mobile home tenants that their leases were terminated.

On November 19, 2019, Calhan sent a letter to Van Sant regarding Prairie View. The letter stated that "merely displaying an intent to reclassify" Prairie View "as a recreational vehicle park," as Van Sant had done, "does not trigger Section 15.10.130," i.e., the grandfathering clause, "so as to exempt a property owner from the requirements of Article 10, Chapter 15."[3] *Id*. at 763. The letter further stated that "[e]ven if we assumed that Van Sant['s] . . . intent to reclassify [Prairie View] prior to November 30, 2018 exempted" Prairie View "at that time," Prairie View "[wa]s undergoing expansions and renovations, which trigger[ed] the requirements under Article 10, Chapter 15." *Id*. at 763–64. "Therefore," Calhan stated, "Van Sant . . . will need to comply with the requirements of Article 10, including without limitation submitting an actual design of the project to the Board . . . for a final determination;

[3] The letter also stated that Prairie View "ha[d] been the subject of an on-going municipal court case, which was closed-out as of October 8, 2019." Aplt. App., Vol. 3 at 763.

providing the minimum facilities as required; water supply distribution, sewage disposal, fire protection, and electrical distribution requirements; community sanitary facilities requirements; and supervision." *Id*. at 764.

On April 22, 2020, Kin, the attorney representing Van Sant, sent a letter to the Board. The letter stated that Van Sant was "the owner and operator of the Hawk Ridge RV Park (HR) located at 1350 Eighth Street, Calhan." *Id*. at 823. In other words, Van Sant had effectively changed the name of its business from Prairie View to Hawk Ridge. In the letter, Kin argued that the property had been reclassified and recognized by the Town as an RV Park prior to November 30, 2018. Kin in turn argued that "the Town [wa]s estopped from claiming the property was used as a Mobile Home Park after November 30, 2018." *Id*. at 824. Kin further argued that Hawk Ridge "[wa]s not subject to the Article 10 of Chapter 15 pursuant to Code §15.10.130." *Id*.

On June 9, 2020, an attorney representing Calhan responded by letter to Kin. Calhan's attorney noted: "several times you state that Van Sant . . . reached a settlement agreement with the Town to reclassify the Subject Property as an RV Park." *Id*. at 825. Calhan's attorney in turn stated: "To be clear, the only settlement agreement formally reached with the Town was that Van Sant . . . would comply with the Code. This Stipulated Agreement was to settle the outstanding Municipal Court Case—for a violation of having recreation vehicles in a *manufactured home park*." *Id*. (citation omitted; emphasis in original). Calhan's attorney further stated that "[n]owhere in the Code does a property owner's intent to reclassify the use of a

property negate the need to comply with all applicable provisions." *Id*. at 826. Calhan's attorney also stated: "Even assuming that Van Sant['s] . . . intent to reclassify the Subject Property prior to November 30, 2018, somehow exempted the Subject Property at the time of the Order, the Subject Property was/is undergoing expansions and renovations, which trigger the requirements under Chapter 15, Article 10," including the removal of debris and manufactured homes "in July 2019." *Id*. Calhan's attorney emphasized that "[t]he Town of Calhan [wa]s not trying to make it difficult for your client to operate [an RV Park] on the Subject Property" and "[wa]s more than willing to review [Van Sant's] plans expeditiously, so that it c[ould] commence operations as soon as possible in compliance wi[th] all applicable Town regulations, including without limitation Article 10 of Chapter 15." *Id*. at 826–27.

Prairie View (aka Hawk Ridge) currently "sits idle." *Id*., Vol. 2 at 563.

Procedural history

On October 8, 2020, Van Sant initiated these proceedings by filing a complaint against Calhan in the United States District Court for the District of Colorado.

On March 17, 2021, Van Sant filed an amended complaint naming three defendants: Calhan, Cameron Chaussee, and Tyler Chaussee. The first claim for relief alleged in the amended complaint was titled "42 U.S.C. § 1983 – Denial of Substantive Due Process." *Id*., Vol. 1 at 74. The claim alleged that the Board "pushed through onerous new regulations to interfere with [Van Sant's] lawful use of its property, while exempting their family-owned competitive business." *Id*. The

claim further alleged that "[t]he Chaussee Trustees had a personal or financial interest in the adoption of the new regulations" and that "the new regulations were adopted to thwart the imminent competition by [Van Sant] with the family-owned RV business." *Id*. The claim alleged that "[t]he actions of the Chaussee Trustees, taken under color of state law, violate[d] the Colorado Code of Ethics and [Van Sant's] right to substantive due process protected by the United States Constitution." *Id*. at 75.

The second claim for relief, titled "42 U.S.C. § 1983 – Equal Protection," alleged that Van Sant's "proposed RV park w[as] similarly situated" to Cadillac Jack's RV Park, but that "[t]he RV Ordinance . . . was adopted for reasons totally unrelated to legitimate state ends" and that, as a result of the adoption of the RV Ordinance, Van Sant "was denied equal protection under the law secured by the United State[s] Constitution by the unethical actions of the Chaussee Trustees and illegal action by the Town." *Id*.

The third claim for relief, titled "42 U.S.C. § 1983 – Taking," alleged that "[t]he RV Ordinance was adopted for improper and unethical purposes" and "denies [Van Sant] an economically viable use of its property, thereby depriving [it] of its reasonable economic value." *Id*. at 75–76.

The fourth and final claim for relief, titled "15 U.S.C. § 1, § 2," alleged "that there was an agreement between Town Trustees and the owners of [Cadillac Jack's] RV Park that was intended to restrain or monopolize trade, specifically the interstate commerce that is inherent with recreational vehicles." *Id*. at 76. The claim further

alleged that, "[a]lternatively, the . . . alleged facts support[ed] the reasonable conclusion that the Town, through the Chaussee Trustees, participated in a conspiracy to restrain or monopolize trade, specifically, the interstate commerce related to recreational vehicle property rentals." *Id*. The claim alleged in support that "the Trustees Chaussee took the overt act of voting in favor of the RV Ordinance . . . with the specific intent to monopolize the RV market or engage in anticompetitive conduct in relation to the Calhan RV market." *Id*. The claim alleged that Van Sant "ha[d] been damaged by the actions of the Town and the Chaussee Trustees." *Id*.

On August 4, 2021, Van Sant filed a second amended complaint that added seven new defendants: Brent Chaussee (in his individual and official capacity), Continental, Video Productions, Dominion, Annette Chaussee (in her individual capacity), Calvin Chaussee (in his individual capacity), and Blake Chaussee (in his individual capacity). *Id*. at 101. The second amended complaint dropped the § 1983 takings claim asserted in the amended complaint, but retained and rearranged all of the remaining claims. Claim I in the second amended complaint, titled "Conspiracy in Restraint of Trade, Sherman Act Sec. 1, 15 U.S.C. § 1," alleged that all of the defendants "knowingly . . . entered into a contract, combination, or conspiracy . . . to unreasonably restrain trade or commerce in the relevant market . . . consisting of the long-term rental of RV parking spaces by RV parks to RV owners in or around Calhan." *Id*. at 113–14. Claim II, titled "Conspiracy to Monopolize, Sherman Act Sec. 2, 15 U.S.C. § 2," alleged that all of the defendants "knowingly . . . combined or

conspired . . . to monopolize trade or commerce in the relevant market . . . consisting of the long-term rental of RV parking spaces by RV parks to RV owners in or around Calhan." *Id*. at 114–15. Claim III, titled "42 U.S.C. § 1983 – Denial of Substantive Due Process," alleged that the "Town Defendants," i.e., Calhan, Cameron Chaussee, Tyler Chaussee, and Brent Chaussee, through their "official actions," "enacted the 2016 Amendment and 2018 RV Ordinance to thwart [Van Sant's] legitimate right to devote its land to an economically viable purpose." *Id*. at 116. Claim IV, titled "42 U.S.C. § 1983 – Equal Protection," alleged that the "Town Defendants ha[d] a documented history of intentional and unequal treatment of Van Sant's RV Park." *Id*. at 117. More specifically, the claim alleged that "[t]he 2016 Amendment and 2018 RV Ordinance were directly targeted towards Van Sant's already existing business" and "[t]here was no conceivable basis for the Town Defendant's [sic] action other than personal financial gain and the insulation of Cadillac Jack's RV Park from competition." *Id*. at 118. The second amended complaint sought relief in the form of damages and a permanent injunction.

On April 1, 2022, the Town Defendants, i.e., Calhan, Cameron Chaussee, Tyler Chaussee, and Brent Chaussee, filed a motion for summary judgment. The Town Defendants argued that they were entitled to summary judgment with respect to Van Sant's antitrust claims because (a) they did not engage in any anti-competitive or monopolistic conduct, (b) they were immune under the Local Government Antitrust Act (LGAA), 15 U.S.C. § 35, and (c) there was no causal connection between actions taken by Brent Chaussee and Van Sant. The Town Defendants

further argued that they were entitled to summary judgment with respect to Van Sant's § 1983 due process claim because (a) Van Sant failed to demonstrate a violation of its right to substantive due process, (b) they were entitled to absolute and qualified immunity, and (c) "Brent Chaussee's sole involvement with the 2018 Ordinance would have been recommending its review and passage to the [Board]." *Id*. at 193. Lastly, the Town Defendants argued that they were entitled to summary judgment with respect to Van Sant's § 1983 equal protection claim because (a) Van Sant was not similarly situated to Cadillac Jack's or Jolly, (b) they were entitled to absolute and qualified immunity, and (c) Brent Chaussee's "actions on the PAD . . . have no connection to any damages claimed by Van Sant." *Id*. at 197.

On that same date (April 1, 2022), the remaining defendants (Continental, Video Productions, Dominion, Annette Chaussee, Calvin Chaussee II, and Blake Chaussee), who will hereinafter be referred to as the Added Defendants, filed their own motion for summary judgment. The Added Defendants noted at the outset of their motion that "after completion of discovery, there [wa]s no evidence of any conspiracy." *Id*., Vol. 2 at 340. They noted that "Brierton admitted in his February 2022 deposition that nearly 17 months after filing the complaint, there [wa]s no such evidence, direct or indirect, of any conspiracy." *Id*. They further noted that "[t]here [wa]s not even a scintilla of evidence that [they] even knew about the proposed ordinances before they were passed, much less that they conspired to have them passed." *Id*. The Added Defendants argued that (a) Van Sant's antitrust claims were barred by *Noerr-Pennington* immunity, (b) any Sherman Act claims related to the

April 2016 ordinance were time-barred, (c) there was no evidence of a conspiracy to restrain trade or to monopolize, (d) the 2018 ordinance was not an unreasonable restraint of trade or an antitrust injury, and (e) there was no evidence that Cadillac Jack's used monopoly power.

Van Sant, in its response in opposition to the Town Defendants' motion for summary judgment, argued "that Brent who recommended, and Cameron and Tyler who voted in favor of the 2016 and 2018 Ordinances, are beneficiaries of the trusts which own Cadillac Jack's RV Park and the land on which it is located," meaning that "[t]hey had and have a direct financial interest." *Id*. at 542. Van Sant also asserted that "Calvin Chaussee stuck his nose into everything, kept up with the town meeting minutes, made sure town officials knew of his presence and interest, and opined even to outsiders that the town should pass an ordinance restricting RVs to exclusively RV parks." *Id*. at 543. All of this, Van Sant argued, tended to exclude the possibility that the three individual Town Defendants and the Added Defendants were acting independently and instead tended to prove that they had a conscious commitment to a common scheme designed to achieve an unlawful objective. Van Sant further argued that because the individual Chaussee Town Defendants acted unlawfully, they were not immune under the LGAA. Van Sant also argued that there was direct evidence establishing a causal connection between Brent Chaussee's action and the damages suffered by Van Sant. Specifically, Van Sant argued that Brent Chaussee was a member of the PAD in 2016 and 2018, and in both years was also an officer of Video Productions, which owns Cadillac Jack's.

As for its due process claim, Van Sant argued that the Town Defendants, through passage and enforcement of the 2016 and 2018 ordinances, "completely deprived Van Sant of the economic value of its property in violation of two prongs of the Due Process Clause: substantive due process and takings."[4] *Id*. at 547. Van Sant argued in support that "prior to [its] actions to convert [its] manufactured home park into an RV park, there had been no discussion of regulation of RV parks." *Id*. at 548. Van Sant further argued that "[t]he facts seem[ed] to show that there had been only one application" to be a new RV park, "and that was Van Sant's." *Id*. Therefore, Van Sant argued, "the Ordinance d[id] not represent a rational means of actually achieving the purposes of public safety." *Id*. at 549. As for its Takings Clause theory, Van Sant argued that "through a series of ordinances and actions the Town Defendants deprived Van Sant of the economic use of its property." *Id*. Van Sant argued in support that it "lost, if not all, then a significant amount of viable economic uses of [its] property." *Id*. at 550. It noted that "[t]o settle the municipal enforcement action brought against it by the town, Van Sant was required to cease operating as a mobile home park by removing all mobile homes from the property." *Id*. But then, Van Sant argues, it "could not afford to comply with Ordinance 2018-13" and the requirements it imposed on RV parks. *Id*. Further, Van Sant argued, the defendants rejected Van Sant's request "to be grandfathered like Cadillac Jack's and

[4] As we have noted, Van Sant's second amended complaint dropped the § 1983 takings claim that was asserted in its amended complaint. Van Sant either overlooked that fact or attempted to implicitly revive the takings claim in its response to the Town Defendants' motion for summary judgment.

Jolly's as an existing RV park." *Id*. Van Sant argued that "[o]n these facts, a jury might very well reasonably conclude that the Town Defendants effected a taking of the Van Sant property and should pay compensation." *Id*. at 550.

Lastly, with respect to its equal protection claim, Van Sant argued that the Town Defendants "violated Van Sant's equal protection rights when they intentionally enacted a series of ordinances that were applied only to Van Sant and not to similarly situated businesses." *Id*. Van Sant asserted that "[s]ince October 19, 2018, [it] ha[d] been classified as an RV park under a stipulation entered into with the Town itself six weeks before Ordinance 2018-13 took effect." *Id*. "Thus," Van Sant argued, "it [wa]s situated similarly to the two other parks in Calhan." *Id*. Van Sant further argued that there was no "rational basis for applying the 2018 RV Ordinance requirements solely to [it] and not the other two parks." *Id*. Van Sant argued that "the Town Defendants recommended and enacted a series of Ordinances targeting Van Sant only to prevent it from competing with certain town officials' business interests." *Id*. at 551.

Van Sant also argued that the Town Defendants were not entitled to absolute or qualified immunity.

Van Sant filed a separate response in opposition to the Added Defendants' motion for summary judgment. Van Sant argued that (a) its antitrust claims were not barred by the *Noerr-Pennington* doctrine, (b) its antitrust claims related to Ordinance 2016-09 were not time-barred, (c) genuine issues of material fact existed that prevented the grant of summary judgment on its antitrust claims, (d) Van Sant had

standing because it suffered antitrust injury caused by the defendants, and (e) the 2018 RV Ordinance violated Sections 1 and 2 of the Sherman Act.

On May 20, 2022, the district court issued an order granting both motions for summary judgment. Turning first to the Added Defendants' motion, the district court concluded that "there [wa]s no genuine dispute of material fact on the question of whether [they] [we]re entitled to *Noerr-Pennington* immunity." *Id*., Vol. 3 at 857. The district court noted in support that "[a] reasonable jury could not find that the actions of the [B]oard . . . in voting to pass RV park regulations were commercial, nor does plaintiff even explain how those actions could be commercial rather than political." *Id*.

As for the Town Defendants' motion, the district court concluded "there [wa]s no genuine dispute of material fact on the issue of LGAA immunity" for these defendants. *Id*. at 860. More specifically, the district court concluded that "there [wa]s no dispute over whether [these] defendants had the legal authority to vote to enact Ordinance 2018-13," even though "it appear[ed] on the record . . . that at least some of [these] defendants . . . engage[d] in some misconduct" under Colorado law. *Id*. As for Van Sant's § 1983 claims against the Town Defendants, the district court first granted summary judgment in favor of defendant Brent Chaussee because "he was only a member of the [PAD] and not the [B]oard" and thus "could not have caused plaintiff's injury because he did not have the power to enact Ordinance 2018-13." *Id*. at 861. The district court in turn granted summary judgment in favor of defendants Tyler and Cameron Chaussee on the basis of absolute legislative

immunity because "[t]hey were members of the [B]oard . . . and voted to enact Ordinance 2018-13." *Id*. at 862. Lastly, the district court granted summary judgment in favor of Calhan. With respect to Van Sant's substantive due process claim against Calhan, the district court concluded that Van Sant "did not have 'a legitimate claim of entitlement' (a federally recognized property interest) to operate as an RV park under the ordinances existing prior to the enactment of Ordinance 2018-13" because (a) "[t]he city attorney made clear that there were some regulations in existence that might affect plaintiff's plans for an RV park and that more regulations regarding RV parks were being contemplated by the [B]oard," (b) "[t]he understanding developed by the city attorney was not unequivocally that [Van Sant] would be able to proceed with its plans under the current regulations," and (c) "there was no law or ordinance on the books stating that RV parks would be subject to limited regulation or any special procedures for adopting regulations applicable to RV parks." *Id*. at 864–65. The district court further concluded that "[w]hile these ordinances certainly inconvenienced [Van Sant] and made the use to which it wanted to put the property prohibitively expensive for it, they did not deprive the property of all economically beneficial uses," and thus Calhan did not "infringe[] [Van Sant's] property rights under [Colo. Rev. Stat. §] 38-1-101." *Id*. at 866. The district court also rejected Van Sant's argument "that Ordinance 2018-13 b[ore] no rational relationship to a legitimate government interest" because "[p]rotecting the health and safety of the citizens of Calhan is a legitimate government interest." *Id*. at 867 (emphasis omitted). As for Van Sant's equal protection claim, the district court concluded "a

reasonable jury could hold that [Van Sant] was similarly situated to the other RV parks in Calhan," but that Van Sant "failed to show that Ordinance 2018-13 was not rationally related to a legitimate government interest, which [wa]s fatal to its equal protection claim." *Id*. at 869.

The district court entered final judgment on May 20, 2022. Van Sant filed a notice of appeal on June 14, 2022.

II

In its appeal, Van Sant challenges some, but not all, of the district court's summary judgment rulings. For the reasons that follow, we affirm all of the challenged district court rulings and conclude that the district court properly granted summary judgment in favor of defendants.

1) The district court's grant of summary judgment in favor of the individual Town Defendants with respect to Van Sant's Sherman Act claims

In its first issue on appeal, Van Sant challenges the district court's grant of summary judgment in favor of the individual Town Defendants on Van Sant's Sherman Act claims. Van Sant argues in support that the actions of the individual Town Defendants were expressly prohibited by Colorado law and, thus, the individual Town Defendants are not immune under the Local Government Antitrust Act of 1984 (LGAA), 15 U.S.C. §§ 34–36.

"Congress passed the LGAA in response to 'an increasing number of antitrust suits, and threatened suits, that could undermine a local government's ability to govern in the public interest.'" *GF Gaming Corp. v. City of Blackhawk, Colo.*,

405 F.3d 876, 885 (10th Cir. 2005) (quoting *Tarabishi v. McAlester Reg'l Hosp.*, 951 F.2d 1558, 1564 (10th Cir. 1991)). The key section of the LGAA, for purposes of this case, provides that "[n]o damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity." 15 U.S.C. § 35(a). "The provisions of the Clayton Act cited [in this section of] the LGAA provide the private damages remedy for violation of the Sherman Act." *GF Gaming Corp.*, 405 F.3d at 885. Thus, the LGAA effectively provides immunity from Sherman Act claims to local governments, officials, and employees for actions taken in their official capacities.

The term "local government" is defined under the LGAA to include, in relevant part, "a city, county, parish, town, township, village, or any other general function governmental unit established by State law." 15 U.S.C. § 34(1)(a). Thus, there is no question that Calhan constitutes a "local government" under the LGAA.

It is undisputed that the individual Town Defendants—Brent, Cameron, and Tyler Chaussee—were acting either as members of the Board or the PAD when they took the actions challenged by Van Sant. The question is whether this was sufficient to mean that they were "acting in an official capacity" for purposes of the LGAA.

We have held that "[t]he legislative history of the LGAA . . . demonstrates that Congress intended the phrase 'acting in an official capacity' to be given broad meaning encompassing all 'lawful actions, undertaken in the course of a defendant's performance of his [or her] duties, that reasonably can be construed to be within the

scope of his duties and consistent with the general responsibilities and objectives of his position.'" *GF Gaming Corp.*, 405 F.3d at 885.

Further, we, as well as the Fourth and Sixth Circuits, have held that the phrase "acting in an official capacity," as used in the LGAA, must be construed broadly to encompass "those lawful actions, undertaken in the course of a defendant's performance of his [or her] duties, that reasonably can be construed to be within the scope of his [or her] duties and consistent with the general responsibilities and objectives of his [or her] position." *Sandcrest Outpatient Servs., P.A. v. Cumberland Cnty. Hosp. Sys., Inc.*, 853 F.2d 1139, 1145 (4th Cir. 1988); *Wee Care Child Center, Inc. v. Lumpkin*, 680 F.3d 841, 848–49 (6th Cir. 2012); *GF Gaming Corp*., 405 F.3d at 885 (agreeing with decision in *Sandcrest*). We and the Fourth Circuit have, in addition, held that "[t]he LGAA . . . 'makes no provision for consideration of a defendant's motives'" in deciding whether the defendant acted in his or her official capacity. *GF Gaming Corp.*, 405 F.3d at 885 (quoting *Sandcrest*, 853 F.2d at 1146).

Seizing on the reference in *Sandcrest* to "lawful actions," Van Sant argues that the three individual Town Defendants acted unlawfully because they "violated express provisions of the Colorado Ethics Code, [Colo. Rev. Stat.] § 24-18-101-113, by failing to disclose to the Town and report in writing to the Colorado Secretary of State . . . their interests in Ordinances 2016-09, 2018-05 and 2018-13; and abstain[ing] from voting on or attempting to influence others regarding them." Aplt. Br. at 23.

The Town Defendants argue in response that "the plain language of the LGAA . . . contains no requirement that the government official's conduct be 'lawful' in the sense that it complies with every state and federal law." Town Defendants' Br. at 22. Instead, they argue, "the statute is focused exclusively on the question of in what capacity such action is taken." *Id*. (citing 15 U.S.C. § 35(a)). And they argue that "[t]his Court should decline to read an additional—and significant—requirement into the statute, especially where, as here, the addition would result 'not [in] a construction of [the] statute, but, in effect, an enlargement of it by the court.'" *Id*. (quoting *Rotkiske v. Klemm*, 140 S. Ct. 355, 361 (2019)).

We find it unnecessary to define in this case the precise scope of the phrase "lawful actions" because we are not persuaded that Van Sant has established that the actions of the individual Town Defendants in voting in favor of the key ordinances were "unlawful" and in turn "unofficial."

The Colorado Ethics Code, which Van Sant relies on, provides, in relevant part:

> A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of other members of the governing body in voting on the matter.

Colo. Rev. Stat. § 24-18-109(3)(a). Conduct that violates this provision is considered under the Colorado Ethics Code to be a "breach[] [of] fiduciary duty and the public trust." *Id*. § 24-108-109(1). The Colorado Ethics Code further provides that "[a] . . .

local government official . . . whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust." *Id*. § 24-18-103(2). It further provides that "[t]he district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people" and that "[a]ny moneys collected in such actions shall be paid to the general fund of the . . . local government." *Id*. Such judicial proceedings "shall be in addition to any criminal action which may be brought against such . . . local government official." *Id*.

The Colorado Ethics Code also includes a "Voluntary disclosure" provision. *Id*. § 24-18-110. It provides, in pertinent part, that "[a] . . . local government official . . . may, prior to acting in a manner which may impinge on his fiduciary duty and the public trust, disclose the nature of his private interest." *Id*. This requires the official to "make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest." *Id*. "If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act." *Id*. "Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction." *Id*.

As a threshold matter, we conclude that Van Sant, in responding to the Town Defendants' motion for summary judgment, failed to "bring forward specific facts showing a genuine issue for trial" as to whether the individual Town Defendants in

fact violated the Colorado Ethics Code by voting in favor of the challenged ordinances. *Kannady v. City of Kiowa*, 590 F.3d 1161, 1169 (10th Cir. 2010) (internal quotation marks omitted). The only evidence that Van Sant pointed to in support of its claim that the individual Town Defendants violated the Colorado Code of Ethics was the following:

> Here, the Individual Chaussee Town Defendants (Cameron, Tyler, Brent) had and have a personal or private interest in the Calhan 2016 and 2018 RV park Ordinances. All three of them are beneficiaries of the AMC Video Trust which owns Cadillac Jack's RV Park and of the AMC Family Trust which owns the land on which it is located. And, they are close relatives of other Chaussees who receive services from and have a financial interest in that RV Park.

ROA, Vol. 2 at 545. As the Town Defendants correctly noted in their reply brief in support of their motion for summary judgment, Van Sant's arguments are "premised on an alleged speculative and exceedingly remote contention requiring a certain sequence of deaths in the Chaussee family and a disregard of amendments directing the estate assets to non-profit entities." *Id*., Vol. 3 at 841. Moreover, as the Town Defendants also correctly noted in their reply brief, the Colorado "Code of Ethics does not define what constitutes a 'personal or private interest,'" and Van Sant made no attempt in its response to the Town Defendants' motion for summary judgment to explain how the individual Town Defendants' speculative interests in the AMC Video Trust and the AMC Family Trust fell within this statutory definition of "personal or private interest." *Id*. at 843. Finally, and relatedly, Van Sant made no attempt in its response to the Town Defendants' motion for summary judgment to address a separate portion of the Colorado Code of Ethics that provides, in relevant

part, that it is not a violation of the public trust for a local government official to "hold an interest in any business . . . which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantive authority." Colo. Rev. Stat. § 24-18-105(2).

Moreover, even if Van Sant had presented sufficient evidence to allow a finder of fact to conclude that the individual Town Defendants had "personal or private interest[s]" in the challenged ordinances, we are not persuaded that the actions of the individual Town Defendants in voting on those ordinances deprived them of the protection of the LGAA. Nothing in the Colorado Ethics Code provides that when a local government official violates the Code, such violation operates to undermine the finality of the government official's actions or renders the government official's action "unofficial." To the contrary, the language of the "Voluntary disclosure" provision suggests that such actions are indeed "official," whether or not the individual decides to voluntarily disclose the information that might serve to "impinge on his fiduciary duty and the public trust." *Id*. To be sure, the Code indicates that the government official is subject to potential civil liability for such actions, and also refers to "any criminal action which may be brought against such . . . local government official." *Id*. § 24-18-103(2). But nothing in the Code purports to directly classify such conduct as criminal or unlawful. Nor, more importantly for our purposes, does the Code purport to render such actions "unofficial."

For these reasons, we conclude that the district court did not err in affording immunity from Van Sant's Sherman Act claims to the individual Town Defendants under the LGAA.

2) The district court's grant of summary judgment in favor of the Added Defendants on Van Sant's Sherman Act claims

In its second issue on appeal, Van Sant argues that the district court erred in concluding that the Added Defendants were immune from Van Sant's Sherman Act claims under the *Noerr-Pennington* doctrine. For the reasons that follow, we reject Van Sant's arguments.

"The First Amendment protects 'the right of the people . . . to petition the Government for a redress of grievances.'" *CSMN Investments, LLC v. Cordillera Metro. Dist.*, 956 F.3d 1276, 1282 (10th Cir. 2020) (quoting U.S. Const. amend. I). "Immunity flows from this right, protecting those who seek redress through the courts from liability for petitioning activities." *Id*. "The contours of this immunity developed in a line of antitrust cases, giving rise to the moniker, *Noerr-Pennington* immunity." *Id*. In *E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), "the Supreme Court considered whether a complainant could 'base a Sherman Act conspiracy [claim] on evidence consisting entirely of activities of competitors seeking to influence public officials.'" *CSMN Investments*, 956 F.3d at 1282 (quoting *United Mine Workers of Am. v. Pennington*, 381 U.S. 657, 669 (1965) (discussing *Noerr*, 365 U.S. at 140)). "The Court said it could not, holding in light of the Petition Clause that 'the Sherman Act does not prohibit . . . persons from

associating . . . in an attempt to persuade the [government] to take particular action with respect to a law that would produce a restraint or a monopoly.'" *Id*. (quoting *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 525 (2002)). Thus, the *Noerr-Pennington* doctrine "exempts from antitrust liability any legitimate use of the political process by private individuals, even if their intent is to eliminate competition." *Tal v. Hogan*, 453 F.3d 1244, 1259 (10th Cir. 2006) (internal quotation marks omitted).

Van Sant argues in its appeal that the Added Defendants have disavowed *Noerr-Pennington* immunity by "categorically deny[ing] any interaction with the Town Defendants to pass the challenged ordinances." Aplt. Br. at 32. Van Sant argues that *Noerr-Pennington* "immunity is only applicable for [those] seeking to influence government." *Id*. In other words, Van Sant argues, the "Added Defendants," "[b]y denying influencing [the] Town Defendants," "have failed to meet their burden of showing why and how they are entitled to *Noerr-Pennington* exemption from the Sherman Act." *Id*. Lastly, Van Sant argues that "the Added Defendants are unable to show—and have not shown—they acted collectively together to influence the Town Defendants." *Id*. at 34.

The Added Defendants argue in response, and we agree, that "Van Sant did not make this argument in the District Court—either in its response to the Added Defendants' (or the Town's) motion for summary judgment or by requesting the District Court to strike the Added Defendants' immunity defense." Added Defendants' Br. at 10–11. Van Sant, in its response to the Added Defendants' summary judgment motion, argued generally that its antitrust claims against the

Added Defendants were not barred by the *Noerr-Pennington* doctrine. Aplt. App., Vol. 3 at 780. In support, Van Sant argued that "given the context and nature of the [Added Defendants'] conduct" in this case, "it can more aptly be characterized as commercial activity with a political impact" and thus "*Noerr-Pennington* does not immunize it." *Id*. at 781. Van Sant also argued that our decision in *GF Gaming*, which effectively protected "the acts of . . . private defendants" in "lobbying and petitioning . . . government officials," "d[id]n't apply" because "[t]he Added Defendants deny the existence of any evidence that they engaged in such [lobbying and petitioning] conduct here." *Id*. The district court construed Van Sant's response as arguing "that added defendants' behavior was not actually petitioning the government for action, but rather engaging in commercial activity that had a political impact." *Id*. at 885. The district court rejected that argument, noting that Van Sant "d[id] not explain how [the] added defendants were engaging in commercial activity in seeking the passage of certain ordinances by the [B]oard." *Id*. at 856. The district court further concluded that "[a] reasonable jury could not find that the actions of the [B]oard . . . in voting to pass RV park regulations were . . . commercial rather than political." *Id*. at 857.

In light of this procedural history, Van Sant has waived the new arguments it seeks to assert on appeal. That is because the general rule in this circuit is that "[a]bsent extraordinary circumstances, arguments raised for the first time on appeal are waived." *Robert v. Austin*, 72 F.4th 1160, 1165 (10th Cir. 2023) (internal quotation marks omitted). "This is true whether the newly raised argument is a

bald-faced new issue or a new theory on appeal that falls under the same general category as an argument presented" in the district court. *Id*. (internal quotation marks omitted).

Even assuming, for purposes of argument, that Van Sant did not waive its new arguments by failing to assert them in the district court, those new arguments lack merit. As the Added Defendants correctly note in their appellate response brief, Federal Rule of Civil Procedure 8(d)(3) expressly states that "[a] party may state as many separate . . . defenses as it has, regardless of consistency." Fed. R. Civ. P. 8(d)(3). Consequently, the fact that the Added Defendants have denied Van Sant's factual allegations that they conspired with the Town Defendants does not preclude the Added Defendants from asserting the alternative argument that they are immune from Van Sant's antitrust claims under the *Noerr-Pennington* doctrine. More specifically, that immunity defense simply assumes, without conceding, the truth of Van Sant's factual allegations. Notably, Van Sant fails to cite to a single authority that would undercut these principles.

Finally, we note that Van Sant, in making its arguments on appeal, concedes that there are no "concrete facts . . . regarding which Added Defendants, whether collectively or individually, actually did [anything] specifically to influence" the Town Defendants. Aplt Br. at 35 (emphasis omitted). In other words, Van Sant effectively concedes that there is no evidence to support its claim that the Added Defendants acted to persuade the Town Defendants to enact the challenged ordinances.

Thus, in sum, we conclude that the district court did not err in granting summary judgment in favor of the Added Defendants on Van Sant's Sherman Act claims.

3) The district court's grant of summary judgment in favor of Calhan on Van Sant's § 1983 substantive due process claim

In its third issue on appeal, Van Sant argues that the district court erred in granting summary judgment in favor of Calhan on Van Sant's § 1983 substantive due process claim. More specifically, Van Sant takes issue with the district court's conclusion that Van Sant "did not have 'a legitimate claim of entitlement' (a federally recognized property interest) to operate as an RV park under the ordinances existing prior to the enactment of Ordinance 2018-13." Aplt. App., Vol. 3 at 864.

Substantive due process "'provides heightened protection against government interference with certain fundamental rights and liberty interests.'" *Powers v. Harris*, 379 F.3d 1208, 1215 (10th Cir. 2004) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)). In this case, Van Sant is "making a substantive due process claim under the fundamental-rights framework set forth in *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997)." *Stewart v. City of Okla. City*, 47 F.4th 1125, 1138 (10th Cir. 2022).

"Our fundamental-rights analysis follows in three steps." *Id*. "First, we consider 'whether a fundamental right is at stake.'" *Id*. (quoting *Abdi v. Wray*, 942 F.3d 1019, 1028 (10th Cir. 2019)). A fundamental right exists "either because the Supreme Court or the Tenth Circuit has already determined that it exists or

because the right claimed . . . is objectively among those deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty." *Id*. (internal quotation marks omitted). "Next, we ask whether the claimed right 'has been infringed through either total prohibition or direct and substantial interference.'" *Id*. (quoting *Abdi*, 942 F.3d at 1028). "Finally, if a right has been infringed, we generally apply either strict scrutiny (if the right is fundamental) or rational basis review (if the right is not fundamental)." *Id*.

Turning to the first of these steps, "[t]he Supreme Court defines 'property' in the context of the Fourteenth Amendment's Due Process Clause as a 'legitimate claim of entitlement' to some benefit." *Hyde Park Co. v. Santa Fe City Council*, 226 F.3d 1207, 1210 (10th Cir. 2000) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)). "An abstract need for, or unilateral expectation of, a benefit does not constitute 'property.'" *Id*. (quoting *Roth*, 408 U.S. at 577). "Property interests 'are created and their dimensions are defined by existing rules and understandings that stem from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.'" *Id*. (quoting *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983)). "Thus, consistent with Supreme Court precedent, a right to a particular decision reached by applying rules to facts constitutes 'property.'" *Id*.

"In municipal land use regulation cases such as this, the entitlement analysis presents a question of law and focuses on 'whether there is discretion in the defendants to deny a zoning or other application filed by the plaintiffs.'" *Id*. (quoting

Norton v. Village of Corrales, 103 F.3d 928, 931– 32 (10th Cir. 1996)). "The entitlement analysis centers on the degree of discretion given the decisionmaker and not on the probability of the decision's favorable outcome." *Id*. (quoting *Jacobs, Visconsi & Jacobs, Co. v. City of Lawrence*, 927 F.2d 1111, 1116 (10th Cir. 1991)). This means Van Sant "must show that under the applicable law," Calhan and its Board "had limited discretion" to adopt ordinances that placed limitations on, or effectively regulated, Van Sant's ability to operate its land as an RV park. *Id*. "Otherwise, the city's decisionmaking lacks sufficient substantive limitations to invoke due process guarantees." *Id*. (internal quotation marks omitted).

According to Van Sant, it "had a property right entitled to Fourteenth Amendment protection at all times prior to October 2018, when Calhan infringed on that right by enacting Ordinance 2018-13." Aplt. Br. at 38. Van Sant argues in support that "[l]ong ago, the Supreme Court established that the 'right of a [landowner] to devote its land to any legitimate use is properly within the protection of the Constitution.'" *Id*. (quoting *Wash. Ex rel. Seattle Title Tr. Co. v. Roberge*, 278 U.S. 116, 121-22 (1928)). Van Sant further argues that "the Colorado Constitution, statutory law and common law each [also] independently recognize Van Sant's interest in using its property for any lawful purpose—including as an RV park." *Id*. at 40. Van Sant in turn argues that "restricting a property owner's 'use and enjoyment' of that property 'deprives the owner of a property interest that may be taken from [it] only in accordance with the Due Process Clause.'" *Id*. at 38–39

(quoting *Stypmann v. City & Cnty. of San Francisco*, 557 F.2d 1338, 1342 (9th Cir. 1977)).

Van Sant argues that "Calhan did not have any discretion over Van Sant's decision in 2015 to begin renting space to RVs because there simply were no procedures to follow and no restrictions in place." *Id*. at 42. "Similarly," Van Sant argues, "when [it] was in the process of converting its property to an RV Park exclusively, Calhan's attorney confirmed in writing that" Calhan did "not have formal zone districts" or "a formal process for reviewing applications to develop property into an RV park." *Id*. "This critical distinction," Van Sant argues, "sets this case apart from the ones cited by the [district] court where the decision-making body had broad discretion to accept or reject the plaintiff's proposed land use *prior* to doing so." *Id*. (emphasis in original). In other words, Van Sant argues that it "had already attained a protectible property right to operate its property as an RV park, which Calhan unduly infringed when it enacted Ordinances 2016-09, 2018-05 and 2018-13." *Id*.

In sum, Van Sant appears to be asserting that because Calhan did not have any RV park regulations in place prior to October 19, 2018, Van Sant had a fundamental right to both convert and operate its property as an RV park and to continue operating its property as an RV park without any future regulations imposed on it by Calhan.

The only Colorado statute that Van Sant points to in support of its position is Colorado Revised Statute § 38-1-101(1)(a), which is part of Colorado's Eminent Domain statute. It provides: "Notwithstanding any other provision of law, in order to

protect property rights, without the consent of the owner of the property, private property shall not be taken or damaged by the state or any political subdivision for a public or private use without just compensation." Colo. Rev. Stat. § 38-1-101(1)(a). Clearly, this statute has no applicability here because Calhan has never "taken or damaged" Van Sant's property "for a public or private use." Instead, Calhan has, at most, imposed certain requirements that Van Sant must satisfy in order to use its property as an RV park.

Van Sant also points to Article II, § 3 of the Colorado Constitution. That section, titled "Inalienable rights," states, in relevant part: "All persons have certain natural, essential and inalienable rights, among which may be reckoned the right . . . of acquiring, possessing and protecting property." Colo. Const. Art. II, § 3. This section, in our view, is irrelevant to the case at hand because Calhan's adoption of the ordinances challenged by Van Sant has not infringed on Van Sant's right to acquire, possess, or protect its property. In any event, the Colorado courts have, in construing this section, emphasized that "[p]roperty rights are not absolute," and that, relatedly, "the right[] to . . . conduct a . . . business [is] not unlimited and can be abrogated in appropriate circumstances." *Stulp v. Schuman*, 410 P.3d 457, 462–63 (Colo. Ct. App. 2012) (citing *Colo. Anti-Discrimination Comm'n v. Case*, 380 P.2d 34, 41 (Colo. 1962)).

We also note that, under Colorado common law, "property rights vest in a particular land use after a building permit has been issued and the landowner acts in reliance on it." *Jordan-Arapahoe, LLP v. Bd. of Cnty. Comm'rs of the Cnty. of*

Arapahoe, Colo., 633 F.3d 1022, 1029 (10th Cir. 2011). "Without a building permit, therefore, developers who rely only on zoning or approved uses are facing an uphill battle." *Id*. Colorado case law does suggest "that once a planned development in a zoning classification is backed by affirmative actions or representations by [local government] officials—such as active acquiescence by word or deed or through some other unequivocal confirmation—then parties who rely on those affirmations will have vested property rights under the common law." *Id*. at 1031 (citing *Eason v. Bd. of Cnty. Commr's of Boulder*, 70 P.3d 600 (Colo. App. 2003)). Here, however, the undisputed facts indicate that there was no "acquiescence" or "unequivocal confirmation" by any Calhan official that Van Sant could convert its property into an RV park and remain subject indefinitely to no further restrictions or regulations. To the contrary, Calhan's attorney specifically told Van Sant's attorney in early October of 2018 that the Board was contemplating imposing new regulations on RV parks.

We therefore agree with the district court that Van Sant has failed to establish that a fundamental right is at stake here. That means that, at best, Van Sant has identified only the existence of a nonfundamental right to operate its property as an RV park subject to the town ordinances that were in place prior to the passage of Ordinance 2018-13. And, in turn, that means that we apply only rational basis review to Calhan's passage of Ordinance 2018-13.

Under rational basis review, a local ordinance "must be upheld . . . if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993). Further,

because a classification subject to rational basis review "is presumed constitutional, the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." *Armour v. Indianapolis*, 566 U.S. 673, 685 (2012) (internal quotation marks omitted).

Van Sant argues that Ordinance 2018-13 is not rationally related to a legitimate government interest for several reasons. Aplt. Br. at 46. First, Van Sant argues that, notwithstanding the stated purposes for Ordinance 2018-13, Calhan had no legitimate purpose for enacting the ordinance. Van Sant argues that "the mere fact that there were no regulations governing RVs previously is not a valid basis for creating new ones" and "[i]n fact, . . . Calhan seems to have gotten along just fine without any RV regulations prior to 2018." *Id*. at 47. Further, Van Sant argues, "a supposed 'influx' of RV parks is not a legitimate reason" and, "[i]f anything, additional RV parks would lead to increased competition, which would create better pricing for consumers and more tax revenue for the town." *Id*. at 47–48.

Van Sant also argues that "Calhan's generic 'right and responsibility' to regulate land uses is not a legitimate reason to pass an ordinance." *Id*. at 48. In support, Van Sant argues that in its summary judgment motion, Calhan "abandoned these three stated purposes altogether in favor of . . . 'health, safety and welfare.'" *Id*. "Yet," Van Sant argues, "the terms 'health, safety and welfare' appear nowhere within [the] Ordinance itself," "[n]or do they appear in the meeting minutes where the Ordinance was discussed prior to its passage." *Id*. Although Van Sant concedes that "'health, safety and welfare' is undoubtedly a legitimate government interest

when sincere," it argues that "it loses that character when it is first offered as a post hoc excuse by an attorney attempting damage control." *Id*. at 48–49. Ultimately, Van Sant argues that Calhan "said the quiet part out loud and declared that the Ordinance was necessary due to 'an influx of RV parks,' which is merely another way to say 'increased competition for Cadillac Jack's.'" *Id*. at 49.

Calhan argues in response that "Ordinance 2018-13 provides for health and sanitation standards, including a water supply in compliance with state standards, separation of sewage lines from potable water lines, and electrical systems installed in accordance with state and local standards." Town Defendants' Br. at 48. Calhan further argues that "[t]he Ordinance also seeks to improve the aesthetics and welfare of RV park residents by requiring certain amounts of open space and the presence of walkways and paths." *Id*. According to Calhan, "[t]he mere fact that [it] did not use the phrase 'health, safety, and welfare' in its ordinance is of no import to the validity of the regulations." *Id*.

We conclude that Calhan has the better of the argument here. To begin with, there can be no debate that the "health, safety and welfare" of the community is a legitimate government interest. And, indeed, Van Sant concedes as much in its opening brief by noting that "'health, safety and welfare' is undoubtedly a legitimate government interest when sincere." Aplt. Br. at 48. Likewise, ensuring that the appearance of RV parks is visually pleasing (or at least acceptable) is also a legitimate government interest. *See City of New Orleans v. Dukes*, 427 U.S. 297, 304 (1976) (holding that city's classification abolishing all new food-cart vendors which

was intended to preserve the appearance and attractiveness of a neighborhood was rational). As for the "sincere" component of Van Sant's concession, there is no such requirement for a legislative action. *See Jicarilla Apache Nation v. Rio Arriba Cnty.*, 440 F.3d 1202, 1211 (10th Cir. 2006) ("We ask not whether [the government's] proffered justifications were sincere, but whether they were objectively reasonable."). Indeed, the Supreme Court has held that it "never require[s] a legislature to articulate its reasons for enacting a statute," which in turn means that "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Beach Comm'ns,* 508 U.S. at 315.

Van Sant also argues that "[m]ost glaring, of course, is Calhan's puzzling decision to 'grandfather' the only two existing RV parks and forever excuse their non-compliance with the new regulations." *Id*. at 50. Van Sant argues that "[i]f, as Calhan now posits, Ordinance 2018-[1]3 was necessary to protect 'health, safety and welfare,' it makes no sense that Cadillac Jack's and Jolly's should be permanently exempt from its ambit (except in the unlikely event that those existing RV parks voluntarily decide to expand or renovate)." *Id*.

As Calhan notes, however, the Supreme Court has held that the existence of a grandfather provision in a challenged statute does not necessarily render the statute arbitrary or irrational. *See Dukes,* 427 U.S. at 305. "The governing constitutional principle" underlying this holding, the Supreme Court has stated, is "that a statute is not invalid under the Constitution because it might have gone farther than it did, that a legislature need not strike at all evils at the same time, and that reform may take

one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *Id*. (internal quotation marks and citations omitted). Thus, Calhan "could reasonably decide," for example, that new RV parks "were less likely to have built up substantial reliance interests in continued operation" under the municipal code prior to the enactment of Ordinance 2018-13, and that, in addition, "the two [RV parks] who qualified under the 'grandfather clause' both of whom had operated in the [town] for [several or many] years" did not present a serious threat to the health, safety, and welfare of Calhan that the new regulations were intended to address. *Dukes*, 427 U.S. at 305. In addition, Van Sant has not pointed to any evidence establishing that either Cadillac Jack's RV Park or Jolly RV Park fail to comply with any of the regulations outlined in Ordinance 2018-13.

Van Sant also suggests, pointing to a statement in the district court's decision, that the grandfather clause at issue here is "highly underinclusive." Aplt. Br. at 51. But that is incorrect. "Underinclusivity," the Supreme Court has stated, occurs "when the State regulates one aspect of a problem while declining to regulate a different aspect of the problem that affects its stated interest *in a comparable way*." *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 451 (2015). Van Sant does not assert, nor does the record indicate, that either Cadillac Jack's RV Park or Jolly RV Park have any features or attributes that threaten the health, safety, and welfare of Calhan's residents. And, in any event, it is well established that a local government "need not address all aspects of a problem in one fell swoop." *Id*. at 449.

For these reasons, we conclude that the district court did not err in granting summary judgment in favor of Calhan on Van Sant's substantive due process claim.[5]

4) The district court's grant of summary judgment in favor of the Town Defendants on Van Sant's equal protection claim

In its fourth and final issue on appeal, Van Sant argues that the district court erred in granting summary judgment in favor of the Town Defendants on Van Sant's equal protection claim. In making this argument, Van Sant concedes that "Calhan's Ordinance 2018-13 is . . . subject to rational basis review and will be deemed unconstitutional only if the state's classification is not rationally related to a legitimate governmental interest." Aplt. Br. at 52. But, Van Sant argues, "the State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *Id*. (quoting *Copelin-Brown v. N.M. State Pers. Office*, 399 F.3d 1248, 1255 (10th Cir. 2005)). Van Sant argues that Ordinance 2018-13 "does not pass muster under these standards for two reasons: (1) it irrationally regulates RV parks differently from other manufactured housing facilities, such as campgrounds and manufactured home parks; [and] (2) its grandfathering provision irrationally favors the two existing RV parks over Van Sant's property." *Id*.

"The Equal Protection and Due Process clauses protect distinctly different interests." *Powers v. Harris*, 379 F.3d 1208, 1215 (10th Cir. 2004). "On the one

[5] Van Sant does not appear to be challenging the district court's grant of summary judgment in favor of the other Town Defendants on its substantive due process claim. But to the extent that it is, the same analysis would apply.

hand, the substantive component of the Due Process Clause provides heightened protection against government interference with certain fundamental rights and liberty interests, even when the challenged regulation affects all persons equally." *Id*. (internal quotation marks and citation omitted). "In contrast, the essence of the equal protection requirement is that the state treat all those similarly situated similarly, with its central purpose [being] the prevention of official conduct discriminating on the basis of race [or other suspect classifications]." *Id*. (internal quotation marks and citations omitted). "As such, equal protection only applies when the state treats two groups, or individuals, differently." *Id*. All of this said, substantive due process analysis and equal protection analysis "proceed along the same lines," i.e., they "converge," meaning that, at least in most cases, the analysis on one "sufficiently addresses both claims." *Id*. Thus, for the reasons we have already outlined in our discussion of Van Sant's substantive due process claim, there is little question that the district court properly granted summary judgment in favor of the Town Defendants on Van Sant's equal protection claim.[6]

[6] Van Sant attempts to sidestep this rule by asserting that "an ordinance can be facially sufficient for substantive due process purposes," yet "can still violate equal protection when . . . it applies against one person or entity in a discriminatory manner." Aplt. Br. at 56. Van Sant cites to a single case in support of this position: *Lindsey v. Normet*, 405 U.S. 56, 74 (1972). Van Sant's reliance on *Lindsey* for this point is misleading, however, because *Lindsey* involved due process and equal protection challenges to numerous individual provisions of "Oregon's judicial procedure for eviction of tenants after nonpayment of rent," and the Court rejected facial due process challenges to many of the provisions, but found valid an equal protection challenge to one separate provision. 405 U.S. at 58. Here, Van Sant is challenging Ordinance 2018-13 in its entirety. Moreover, Van Sant has not, in

Out of an abundance of caution, however, we will separately walk through the equal protection analysis. "The government violates the Equal Protection Clause when it 'treats someone differently than another who is similarly situated' without a rational basis for the disparate treatment." *Christian Heritage Academy v. Okla. Secondary Sch. Activities Ass'n*, 483 F.3d 1025, 1031 (10th Cir. 2007) (quoting *Crider v. Bd. of County Comm'rs of Boulder*, 246 F.3d 1285, 1288 (10th Cir. 2001)). In other words, the Equal Protection Clause "embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly." *Vacco v. Quill*, 521 U.S. 793, 799 (1997).

In this case, Van Sant appears to be asserting a class-of-one claim. "The paradigmatic class of one case . . . is one in which a public official, with no conceivable basis for his action other than spite or some other improper motive (improper because unrelated to his public duties), comes down hard on a hapless private citizen." *Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1216 (10th Cir. 2011) (cleaned up). "To prevail on this theory, a plaintiff must first establish that others, similarly situated in every respect were treated differently." *Id.* (internal quotation marks omitted). "A plaintiff must then show this difference in treatment was without rational basis, that is, the government action was irrational and abusive, and wholly unrelated to any legitimate state activity." *Id.* (internal quotation marks and citation omitted).

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asserting its claims in this case, made any distinction between facial and as-applied claims.

Van Sant points to Cadillac Jack's RV Park and Jolly RV Park as the other parties similarly situated to it in every respect. The problem, however, is that Van Sant cannot establish that it was similarly situated in every respect to Cadillac Jack's RV Park or Jolly RV Park. At the time that the Board enacted Ordinance 2018-13, Van Sant was, under then-existing Town ordinances, and despite its stated intentions to change its operation to an RV park, effectively operating a mobile home park because it had more than one mobile home situated in its park. In contrast, it is undisputed that both Cadillac Jack's RV Park and Jolly RV Park were operating at that time as RV parks and had done so for at least several years prior to the enactment of Ordinance 2018-13.

Even assuming, for purposes of argument only, that Van Sant was similarly situated to the two existing RV parks, for the reasons outlined above, Van Sant cannot demonstrate that the differential treatment of these three entities under Ordinance 2018-13 lacked a rational basis. As discussed above, the Board and Town had a rational basis for imposing the regulations contained within Ordinance 2018-13, and also for including a grandfather clause that operated to exempt the two existing RV parks from complying with those regulations.[7]

[7] In its opening brief, Van Sant makes passing references to two other ordinances, Ordinance 2016-09 and Ordinance 2018-05, and argues that these ordinances should be considered "collectively" with Ordinance 2018-13. Aplt. Br. at 57. As the Town Defendants note, however, any challenge to Ordinance 2016-09 is time-barred. Further, Van Sant has not attempted to, and cannot, establish that Ordinance 2018-05 is unconstitutional standing alone. Finally, Van Sant has not pointed to a single case involving an equal protection challenge to a series of ordinances, statutes, or regulations enacted over time by a legislative body.

In sum, we conclude that the district court did not err in granting summary judgment in favor of the Town Defendants with respect to the equal protection claim asserted against them by Van Sant.

III

The judgment of the district court is AFFIRMED.