

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

June 16, 2023

Lyle W. Cayce  
Clerk

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No. 22-50908

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RAFAEL MARFIL; VERGE PRODUCTIONS, L.L.C.;  
ENRICO MARFIL; NAOMI MARFIL; KOREY A. RHOLACK;  
DANIEL OLVEDA; DOUGLAS WAYNE MATHES,

*Plaintiffs—Appellants,*

*versus*

CITY OF NEW BRAUNFELS, TEXAS,

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 6:20-CV-248

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Before JONES, CLEMENT, and HAYNES, *Circuit Judges*.<sup>1</sup>

EDITH H. JONES, *Circuit Judge*:

Plaintiffs here appeal the Rule 12(b)(6) dismissal of their complaint alleging that the City of New Braunfels’s zoning regulation banning short-term rentals of residential properties in certain areas of the city is unconstitutional. The district court ordered dismissal by approving a few

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<sup>1</sup> Judge Haynes dissents. She would affirm for the reasons stated by the district court.

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conclusory paragraphs in a magistrate judge's recommendation. This court's relevant case law, however, indicates that some factual development may often occur in these cases, and that summary judgment may often follow. *See, e.g., Mahone v. Addicks Util. Dist.*, 836 F.2d 921, 935-37 (5th Cir. 1988). We make no prediction on the future course of this case, but based on the complaint's well-pled allegations, plaintiffs are entitled to engage in discovery in an attempt to surmount the currently high bar for challenging local zoning ordinances under the Constitution.

VACATED and REMANDED.