

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 16, 2023

Lyle W. Cayce
Clerk

No. 22-50908

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.

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

Before JONES, CLEMENT, and HAYNES, *Circuit Judges*.¹

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

¹ 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.