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Miami Argues It Was Victimized By Sub-Prime Mortgage Debacle

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In the aftermath of the housing crisis of 2008, big banks such as Wells Fargo shelled out hundreds of millions of dollars to black and Latino borrowers who claimed they were steered into higher-risk, higher-fee loans than were white borrowers who presented the same credit risk. But these individual homeowners weren't the only ones affected by the foreclosures that left entire neighborhoods full of empty, boarded-up houses. City governments were also suddenly faced with maintaining these crumbling swaths of real estate. While property values and tax revenues fell, they dispatched police and firefighters to protect the homes from vandalism and criminal activity. Should they also be able to go after the banks for financial damages?
That's the question facing the Supreme Court on Tuesday. Cities such as Miami, Los Angeles, Providence, Birmingham, Memphis and Baltimore have all sued the banks, using the Fair Housing Act to argue that they were financially injured by the racially discriminatory lending practices. A few of these lawsuits have already settled, but the Supreme Court will hear arguments in Miami's case, which two banks — Wells Fargo and Bank of America — have asked the courts to dismiss, claiming that cities are abusing a law designed to protect against segregation, not guarantee municipal tax revenues.

While one important issue in the case is a purely legal question — whether cities have standing to sue — the heart of the case is an empirical challenge: Can the cities prove that they were directly and measurably harmed by the banks' discriminatory lending practices? The Fair Housing Act is cities' best chance to reclaim some of the money lost during the financial crisis, according to lawyers I spoke to, even though it means the cities can only claim damages caused by discrimination. The banks say it's impossible for Miami or any other city to prove that their actions led directly to the cities' financial troubles. But Miami nevertheless claims that there is ample evidence to suggest that when banks discriminate against borrowers, cities are victimized, too. In an amicus brief filed in support of Miami, a group of housing scholars argued that there is a direct link between the harm to borrowers documented by people such as Rugh and financial losses incurred by cities. Citing more than a decade of economic and sociological research from a variety of sources, Justin Steil, a professor of law and urban planning at MIT and one of the authors of the brief, explained, "the data is well established that foreclosures do lead to decreases in neighboring property values, which then lead to decreases in city revenues. Foreclosures," he added, "also lead to more expenditure by the city in re-securing those properties, dealing with the vandalism, squatting, fires. And if the neighborhoods don't recover, it just remains an ongoing problem for those communities to deal with."

Supporters of the banks in this case say that if anything, leaders of cities like Miami encouraged the influx of credit into their municipalities. “I really think Miami wants to have this both ways,” said Mark Calabria, director of financial regulation studies at the Cato Institute. “If the banks weren’t doing business in Miami, they’d have a problem with that. It’s hard for me to believe that Miami would have been better off if Bank of America and Wells Fargo hadn’t been there.” Establishing that cities suffered as a result of the banks’ lending practices is just the beginning, though. If the Supreme Court allows Miami’s lawsuit to go forward, the city will next have to figure out how much money to demand from the banks and be able to defend that number in court. Coming up with a compelling estimate of damages will be challenging--but not impossible.