



# Supreme Court Revisits 2008's Housing Collapse With Banking Test Cases

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As voters go to the polls on Tuesday, the U.S. Supreme Court will be revisiting the 2008 collapse of the housing market, and the resulting drop in property values and property tax revenue. At issue are two cases testing whether Miami can sue Wells Fargo and Bank of America under the Fair Housing Act for alleged racial discrimination in mortgage terms and foreclosures.

Specifically, the city of Miami alleges that the banks discriminated against black and Latino homeowners in terms and fees.

That made mortgages more expensive than they otherwise would have been, and when these homeowners ran into trouble, the suit says, the banks refused to refinance mortgages on terms equal to those offered to white borrowers in similar economic circumstances.

It is a novel lawsuit, brought not by individual homeowners but by the city of Miami, which was among the hardest hit in the housing foreclosure crisis. Supported by two dozen other cities, Miami contends that local governments are in the best position to enforce the statute against large lending institutions that discriminate against certain borrowers.

The city claims that the banks' foreclosures were racially imbalanced and unnecessary. They also say the foreclosures resulted in a dramatic drop in property values, which in turn resulted in a dramatic drop in property tax revenue at the very time the city needed to spend more to deal with the resulting urban blight.

A federal appeals court based in Atlanta ruled in favor of the city, allowing it the chance to prove its claims at trial. The banks appealed to the Supreme Court, contending that Congress never authorized such suits under the Fair Housing Act and that Miami has failed to show it suffered directly from the discriminatory lending practices it alleges.

According to the banks, if Miami can use the Fair Housing Act to hold them responsible for its financial hardship, anyone harmed by declining property values — from the local utility company or grocery store to neighboring residents — could do the same.

Miami counters that municipalities differ from private actors because they have an interest in promoting fair housing. Banks' predatory lending practices, Miami says, had "a direct effect" on its "efforts to assure fair housing." According to the city, it not only seeks economic relief, but also aims to fulfill the Fair Housing Act's commitment to "provide ... fair housing throughout the United States."

Congress passed the Fair Housing Act in 1968 to counteract widespread residential segregation and unequal housing and economic conditions, which had resulted in large part from discriminatory lending policies and white flight. The statute bans a range of discriminatory housing practices, including discriminatory lending. Its creators viewed fair housing as a "basic keystone" in solving the poverty, unrest and crime that had gripped the nation's inner cities.

In a brief filed with the court, some two dozen cities argue that Miami has accused Bank of America and Wells Fargo of committing "precisely" the forms of discrimination that originally gave rise to the Fair Housing Act. Cities including Los Angeles, Philadelphia and Kansas City, observe that municipalities "affected by high foreclosure rates are beginning to resemble the inner-city areas roiled by violence and poverty in the 1960s."

The banks contend that Miami cannot sue because the city has not shown that discriminatory lending practices were the "proximate cause" of its drop in property tax revenue. While there is little doubt that foreclosures lead to empty houses, which in turn lead to blight and lower property values, the banks argue that economic downturns can be just as responsible as the terms of any loan or series of loans—whether they are discriminatory or not.

The conservative Cato Institute also cautions that, if Miami can sue the banks under the Fair Housing Act, municipalities throughout the country could bring similar lawsuits simply to raise revenue — "government by litigation," the organization calls it.

Miami notes that the federal government has played a limited role in enforcing the Fair Housing Act. The Department of Justice has intervened in just two lawsuits similar to Miami's (in Baltimore and Memphis), the city says.