

Can Miami Sue Banks Over Predatory Lending? SCOTUS Hears Arguments

By Lauren Kelly-Jones, J.D. Candidate 2019 | November 18, 2016

While millions were at the polls on Election Day, the Supreme Court revisited the 2008 financial crisis. In Washington, D.C., the Court heard arguments about whether Miami can sue banks under the Fair Housing Act (FHA) for discriminatory, predatory lending practices.

Miami is [seeking compensation](#) for damages incurred as a result of alleged FHA violations by Wells Fargo and Bank of America in the lead-up to the financial crisis, although the foreclosures that stem from such violations affected the city [only indirectly](#). Last year, the U.S. Court of Appeals for the 11th Circuit allowed the lawsuit to move forward. The banks appealed.

The city alleges that African-American and Latino borrowers in Miami were [more likely](#) to receive unaffordable loans than white borrowers in similar circumstances, and that Wells Fargo and Bank of America directly targeted these minorities, leading to widespread defaults with [catastrophic effects](#) on the surrounding communities, property values, and property tax revenue. Miami claims that the foreclosures have [caused the city](#) “significant, direct, and continuing financial harm.”

The FHA, enacted in 1968, is a civil rights law that bars discrimination in the rental, sale, and financing of housing. The banks argued that Congress did not intend to authorize cases like Miami’s lawsuit when it passed the FHA, and claimed that Miami had not proven that discriminatory lending practices were the “proximate cause” of its drop in property tax revenue. In front of the Supreme Court, Neal Katyal, representing the banks, warned that ruling for Miami [would create](#) an “unlimited theory of liability” and called the city’s legal theory “six-step liability.”

The Court seemed divided—Justices Ruth Bader Ginsburg, Elena Kagan, and Sonia Sotomayor appeared to agree with the 11th Circuit’s decision. Will the case be allowed to move forward? And, if so, how will the Supreme Court construct a rule that avoids opening the courthouse doors to many more lawsuits? We will likely hear the answer sometime next year.