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Miami vs BofA a Mixed Bag for Banks

The Supreme Court ruled on Monday, in ***Bank of America Corp. v City of Miami***, that cities can bring suits alleging discrimination under the Fair Housing Act. The 5-3 decision, with Chief Justice John Roberts joining the majority, was, in the words of Amy Howe, writing in *SCOTUSblog*, was a "mixed-bag ruling" "which "gives ammunition to both sides in litigation between cities and banks under the Fair Housing Act over the impact of predatory lending practices on local communities."

Miami filed suit against Bank of America and Wells Fargo in 2013, arguing that the banks had violated the Fair Housing Act (FHA) in several ways. They are alleged to have made loans to minority borrowers that included "excessively high interest rates, unjustified fees, falsely promoted teaser rates, large prepayment penalties, and unjustified refusals, when borrowers defaulted, to **refinance or modify** the loans. The city claimed that these actions not only had a disparate impact on minority borrowers when compared to their white counterparts, but burdened the city with lower property values and thus diminished property tax revenues, while heightening demand for city services like police and fire protection.

The banks contended that the city did not have standing; was not within the "zone of interests" that Congress intended to protect when it passed the FHA. The majority, which, in addition to Roberts, included Justices Ruth Bader Ginsburg, Sonia Sotomayor, Elena Kagan, and Stephen Breyer rejected this contention. Breyer, who wrote the majority opinion, explained that the FHA allows **anyone** who "claims to have been injured by a discriminatory housing practice" to bring a lawsuit and that the Supreme Court has always insisted on interpreting this definition broadly.

It was, however, **not an unqualified win** for Miami. The banks had asked the court to rule on whether the harms Miami claimed were sufficiently related to a FHA violation that the banks should have to pay for them. The lower court, the U.S. Court of Appeals for the 11th Circuit, ruled that the city could prove this because the effects of the banks' alleged practices were foreseeable. Yesterday the Supreme Court said an FHA violation could "be expected to cause ripples of harm to flow far beyond the defendant's misconduct" and that nothing suggests that Congress intended to provide a remedy wherever those ripples travel." Thus, the court said the city must show a direct connection between the violation and the injury, and sent the case back to the lower court to determine if such a direct connection can be determined.

National Average Mortgage Rates

Mortgage News Daily	Rate	Change	Points
30YR Fixed	7.33%	**0.00**	0.00
15YR Fixed	7.01%	**+0.02**	0.00
30YR FHA	6.98%	**+0.02**	0.00
30YR Jumbo	7.60%	**0.00**	0.00
7/6 SOFR	6.85%	**+0.03**	0.00
30YR VA	6.99%	**+0.01**	0.00

Rates as of: 10/27

MBS and Treasury

	Price / Yield	Change
MBS UMBS 6.0	99.40	**-0.05**
10 YR Treasury	5.0061	**+0.0073**
30 YR Treasury	5.3114	**-0.0005**

Pricing as of: 10/28 7:08AM EST

Recent Housing Data

		Value	Change
Mortgage Apps	Oct 14	188.6	-5.32%
Building Permits	Sep	1.4M	+0.43%
Housing Starts	Sep	1.22M	-4.24%
New Home Sales	Aug	684K	+12.69%
Pending Home Sales	Aug	71.2	0%
Existing Home Sales	Oct	3.99M	+0.25%
Builder Confidence	Oct	29	-9.38%

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Justice Clarence Thomas wrote a dissenting opinion joined by Justices Anthony Kennedy and Samuel Alito; Justice Neil Gorsuch joined the court after oral arguments and did not participate in the decision. The three dissenting justices agreed with the majority that the FHA was intended to protect victims of discrimination and perhaps someone in close proximity affected by that discrimination, but nothing in the law "suggests that Congress was concerned about decreased property values, foreclosures, and urban blight, much less about strains on municipal budgets that might follow." His opinion **concurred** with the majority that a suit under FHA must show that direct connection between injury and violation, but did not agree the case should be sent back to the lower court saying that there was little on which to expect that Miami or any similar plaintiff can "satisfy the rigorous standard" the majority had just established.

Howe's analysis concludes that Monday's decision will allow Miami's case and those of other cities that have brought similar lawsuits to go forward, "but it also establishes a fairly stringent test for damages that could put the brakes on many, if not most, cities' lawsuits."

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Philip Bennett

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