No. 15-1111

In the Supreme Court of the United States

BANK OF AMERICA CORP., ET AL.,
Petitioners,

v.

CITY OF MIAMI, FLORIDA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF FOR RESPONDENT

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QUESTIONS PRESENTED

This case is about stare decisis. Forty-five years after first examining the Fair Housing Act, this Court and every circuit court continue to interpret "aggrieved person" under the FHA to reach "as far as Article III permits." *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 176 (2011) (citing *Gladstone, Realtors v. Vill. of Bellwood*, 441 U.S. 91, 109 (1979)). In giving voice to congressional intent, the Eleventh Circuit determined that any person with Article III standing has pleaded a claim. J.A. 30. The Eleventh Circuit also recognized the foreseeable harms that Miami suffered because of the Bank's predatory lending to Black and Latino residents. J.A. 41-44. As such, the court found that the City sufficiently pleaded proximate cause under the FHA. J.A. 41-44. Indeed, the City of Miami alleges injuries and a causal chain that are nearly identical to those which were previously found cognizable in this Court. *See Gladstone*, 441 U.S. at 110-11. The questions presented are as follows:

1. Considering congressional ratification of this Court's broad reading of "aggrieved person" in the 1988 amendments to the FHA, can a municipality suffering economic harm as a result of discriminatory conduct state a claim?

2. When a bank steers minority residents into predatory loans that it knows they cannot repay, can a municipality plead proximate cause based on the economic injury that it necessarily suffered as a result of the discrimination?

PARTIES TO THE PROCEEDINGS BELOW

The parties to these proceedings include the following:

Petitioners Bank of America Corporation; Bank of America, N.A.; Countrywide Financial Corporation; Countrywide Home Loans; and Countrywide Bank FSB (collectively referred to throughout as "Bank of America," "BoA," or "the Bank") were defendants in the district court and appellees in the circuit court.

Respondent City of Miami, Florida (referred to throughout as "the City" or "Miami") was the plaintiff in the district court and appellant in the circuit court.

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JURISDICTIONAL STATEMENT

The Eleventh Circuit entered judgment on September 1, 2015 and denied a petition for rehearing by the Bank on November 4, 2015. The Bank filed a petition for certiorari on March 4, 2016, which was granted on June 28, 2016. The jurisdiction of this Court in this case is found under 28 U.S.C. § 1254(1) (2012).

STATUTORY PROVISIONS

The relevant statutory provisions of the Fair Housing Act, 42 U.S.C. §§ 3601–3619 (2012), are reproduced in full in the Appendix.

STATEMENT OF THE CASE

I. FACTS

For years, the Bank has preyed on the Black and Latino residents of Miami by giving them loans that it knew they could never repay. BoA engaged in a vicious cycle of redlining and reverse redlining. J.A. 180-83, 200-10, 213-27. First, BoA starved minority communities of loans. J.A. 180-82. Then, when it did

extend credit to minorities, it did so only on predatory terms. J.A. 183, 200-10, 213-27. For example, an African-American borrower in Miami was 5.388 times more likely to be pushed into a predatory loan than a similarly-situated white borrower. J.A. 226-27. These loans contained more risk, steeper fees, and higher costs. J.A. 180-82, 200-10, 213-27. Finally, after unsuspecting minority borrowers realized they were stuck in impossible loans, BoA refused to refinance or refused to extend credit on terms equal to those offered to similarly-situated white borrowers. J.A. 180-82, 220-21.

This was not a mistake. It was an intentional practice to boost profits at the expense of minority borrowers. BoA intentionally steered minority residents into loan terms that it knew were too onerous for these borrowers to bear. J.A. 217-21. Former BoA employees who worked on loans in the Miami area explained that the Bank targeted minorities who it believed would not understand the terms or question the consequences of the predatory loans they were offered. J.A. 217-21. The Bank incentivized loan officers to steer Black and Latino residents away from more advantageous loans. J.A. 217-21. This increased profits for the Bank and its loan officers at the expense of minority borrowers. J.A. 217-21.

This practice predictably led to a concentration of foreclosures in minority communities. J.A. 211-13. A BoA loan in a predominantly African-American or Latino neighborhood is 5.857 times more likely to result in foreclosure than a BoA loan in a non-minority neighborhood. J.A. 229. The Bank knew this was the case. Data from BoA's loan originations in Miami from 2004 to 2012 confirmed that minority

communities experienced significantly more defaults than white communities. J.A. 227-35.

The City was inevitably injured by these foreclosures. By steering minorities toward predatory loans, the Bank caused properties owned by minorities to fall into unnecessary or premature foreclosure, depriving the City of property tax revenue. J.A. 235-39. The foreclosures also forced the City to spend more on municipal services to combat the public health risks that accompanied property vacancies. J.A. 240-42.

The fallout from redlining and reverse redlining has not stopped the Bank. As Miami attempts to undo the damage that BoA caused, the Bank continues to generate profits through the exploitation of minorities. J.A. 243.

II. PROCEDURAL HISTORY

Miami brought suit in the Southern District of Florida to stem the tide of predatory loans that BoA was issuing, and still issues, in Miami. The City alleges that BoA violated 42 U.S.C. § 3604(b) and § 3605(a) because it intentionally steered minority residents into predatory loans on the basis of race. J.A. 245-46. It is undisputed that BoA engaged in intentional discrimination in lending to minorities. J.A. 4-58, 61-79. Inexplicably, the district court restricted the cause of action under the FHA by ignoring Supreme Court precedent. J.A. 68-71. It also, upon superficial analysis, found that Miami did not adequately plead causation under the statute. J.A. 72-74. At no point did the district court find that Miami had no right to sue under 42 U.S.C. § 3613(a). J.A. 61-79.

The Court of Appeals for the Eleventh Circuit reversed this decision upon extended and thoughtful analysis. J.A. 4-58. As is undisputed here, the Eleventh Circuit found that Miami had shown Article III standing. J.A. 18-22. Following Supreme Court precedent, the Court refused to impose any limitation beyond Article III injury in fact in determining that Miami had stated a claim under the FHA. J.A. 22-33. Understanding the Act's broad and remedial purpose, the Eleventh Circuit also found that Miami met the statute's causation requirement. J.A. 33-44. The decision of the District Court was reversed, and the case was remanded. J.A. 58.

This appeal follows the Court's grant of BoA's petition for a writ of certiorari.

SUMMARY OF THE ARGUMENT

I. "Aggrieved person" under the FHA has always been held to reach all persons that could plead an Article III injury in fact. This interpretation was explicitly approved by Congress in 1988. The City suffered an Article III injury in fact because the Bank's discrimination caused a decrease in property tax revenue and an increase in municipal services spending.

A. Stare decisis counsels that this Court should uphold its precedential interpretation of the FHA in *Gladstone* and *Havens*. To overcome the enhanced strength of stare decisis in a case of statutory interpretation, BoA must show that the precedential interpretation is incorrect and that a special policy justification exists for changing the current interpretation. BoA cannot show either, especially because Congress approved the Court's broad interpretation in 1988.

B. Disallowing a municipal corporation to bring suit under § 3613(a) goes against the plain meaning of the word "person," violates cardinal rules of statutory interpretation, and creates absurdities in the statutory scheme. No circuit court has found that § 3613 excludes suit by municipal corporations. This Court need not do so now. Section 3613's header—"Enforcement by private persons"—is merely meant to differentiate between enforcement by federal officials on behalf of persons and suits brought directly by aggrieved persons on their own behalves.

C. Miami has pleaded the identical injury that was found cognizable in *Gladstone*: a diminished tax base and increased costs of municipal services. The City can sue for economic injury caused by discriminatory conduct.

II. The City adequately pleaded causation under the FHA. Regardless of whether this Court turns to *Gladstone* or to tort law principles of proximate cause, the City's injuries are closely related to the Bank's discriminatory practices.

A. Tort law principles of proximate cause counsel that this Court should find Miami adequately pleaded causation. The Bank should have foreseen the harms it imposed on the City when it provided Black and Latino residents with loans that it knew they could not repay. Those loans predictably led to foreclosures, which likewise produced foreseeable injuries to the City.

B. Directness should not be read into the FHA's proximate cause requirement, especially given the statute's broad and remedial purpose to combat the very types of discriminatory housing practices in which the Bank engaged. Even if Miami must allege a direct injury under the FHA, the harm that the City

suffered is necessarily tied to the foreclosures that BoA's discrimination caused and is thus direct.

C. The Bank improperly introduced facts outside of the Complaint to hypothesize about why foreclosures disproportionately occurred in Miami's minority communities. Those arguments should be rejected at the motion to dismiss stage of proceedings.

ARGUMENT

This Court has been asked by the Bank to review the denial of BoA's motion to dismiss based on the Eleventh Circuit's interpretation of "aggrieved person" and causation under the FHA. In reviewing a 12(b)(6) motion, a court must take all factual allegations in a complaint as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To defeat a 12(b)(6) motion, a plaintiff must merely allege facts that "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While a complaint must be plausible, the pleading standard is not supposed "to impose a great burden on a plaintiff." *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 347 (2005). Miami met this burden. It pleaded a sufficient claim under the FHA because the Bank's discriminatory lending caused cognizable injury to the City by diminishing its tax base and increasing the costs of municipal services.

I. MIAMI ALLEGES INJURIES COGNIZABLE UNDER THE FHA BECAUSE THE ACT EXTENDS AS BROADLY AS ARTICLE III.

This case is about stare decisis. Since this Court first interpreted the FHA, it has followed one unwavering path: "aggrieved person" under the FHA

should be defined "as broadly as is permitted by Article III of the Constitution." *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972) (quoting *Hackett v. McGuire Bros.*, 445 F.2d 442, 446 (3d Cir. 1971)); *accord Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982); *Gladstone, Realtors v. Vill. of Bellwood*, 441 U.S. 91, 109 (1979); *see also Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 176 (2011) (acknowledging that the FHA still defines "aggrieved person" to the extent of Article III); *Bennett v. Spear*, 520 U.S. 154, 165-66 (1997) (same); *cf. City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731-32 (1995) (reaffirming *Trafficante*'s "generous construction" of the FHA). Every circuit court in this country follows in the Supreme Court's well-trodden path.[1] This Court should not deviate now.

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[1] *McGrath v. HUD*, 722 F. Supp. 902, 905 (1st Cir. 1989); *Mhany Mgmt. v. Cty. of Nassau*, 819 F.3d 581, 600 (2d Cir. 2016); *Fair Hous. Council v. Main Line Times*, 141 F.3d 439, 441 (3d Cir. 1998); *McCauley v. City of Jacksonville*, No. 86-1674, 1987 WL 44775, at *2 (4th Cir. Sept. 8, 1987); *McCardell v. HUD*, 794 F.3d 510, 516-17 (5th Cir. 2015); *Hollis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 544 (6th Cir. 2014); *New W., L.P. v. City of Joliet*, 491 F.3d 717, 721 (7th Cir. 2007); *Keller v. City of Fremont*, 719 F.3d 931, 947 (8th Cir. 2013); *El Dorado Estates v. City of Fillmore*, 765 F.3d 1118, 1119-23 (9th Cir. 2014); *Wilson v. Glenwood Intermountain Props., Inc.*, 98 F.3d 590, 593 (10th Cir. 1996); *Wells v. Willow Lake Estates, Inc.*, 390 F. App'x 956, 958 (11th Cir. 2010); *Equal Rights Ctr. v. Post Props., Inc.*, 633 F.3d 1136, 1138 (D.C. Cir. 2011); *Teva Pharm. USA, Inc. v.*

Under this Court's "zone of interests" test, courts must perform statutory interpretation to assess whether a statute's cause of action extends to the plaintiffs before it. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1388 (2014). Over the years, the Court has used the terms "statutory standing," "prudential standing," and "zone of interests" as different labels for this same inquiry. *Id.* at 1387-88, 1387 n.4.

Although the Court called its inquiry one of statutory standing when it decided the trilogy of FHA cases, the difference in terminology does not change the fact that the Court faithfully conducted the analysis *Lexmark* requires. The Court used traditional methods of statutory interpretation to determine who may bring a claim. *See Havens*, 455 U.S. at 376-77 ("*Bellwood* . . . held that the only requirement for standing to sue under § 812 is the Art. III requirement of injury in fact."); *Gladstone*, 441 U.S. at 109 ("Standing under § 812, like that under § 810, is 'as [broad] as is permitted by Article III of the Constitution.'" (citation omitted)); *Trafficante*, 409 U.S. at 209 ("With respect to suits brought under the 1968 Act, we reach the . . . conclusion" that aggrieved person should be read out to the extent of Article III.). Regardless of whether the Court's FHA opinions are labeled as "statutory standing" or "zone of interests," the Court has already decided the *Lexmark* question. After interpreting the FHA, this Court concluded that corporate discriminatory conduct toward residents of a city harm the municipality because that conduct

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Novartis Pharm. Corp., 482 F.3d 1330, 1338 (Fed. Cir. 2007).

decreases the municipality's tax base and increases its costs of municipal services. *Gladstone*, 441 U.S. at 110-11. This Court's opinions should be given the deference of stare decisis described below.

A. Stare Decisis Controls the Definition of "Aggrieved Person" Under the FHA.

BoA asks this Court to go against the demands of stare decisis and ignore almost forty-five years of precedent interpreting "aggrieved person." The meaning of aggrieved person does not need to change because it is not incorrect. Stare decisis is "the idea that today's Court should stand by yesterday's decisions." *Kimble v. Marvel Entm't, LLC*, 135 S. Ct. 2401, 2409 (2015). While it is not mandatory, it is the much "preferred course because it promotes the . . . predictable . . . development of legal principles" and reduces wasteful relitigation of issues. *Id.* (quoting *Payne v. Tennessee*, 501 U.S. 808, 827-28 (1991)). Stated differently, stare decisis advises that it is more important that the rule "be settled than that it be settled right." *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting).

Opinions interpreting the FHA are subject to the strongest form of stare decisis because they interpret a statutory scheme. Stare decisis is enhanced in statutory interpretation cases because the interpretation becomes part of the very fabric of the statute. *Kimble*, 135 S. Ct. at 2409. Once an interpretation is decided, it is left to Congress to correct it. *Id.* This leaves the decision open to the political process but binds the Court.

For BoA to turn back forty-five years of precedent, it not only needs to prove that this Court's interpretation of the FHA is incorrect, but must also

provide a special justification to alter the interpretation. *See id.* (quoting *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2407 (2014)). BoA fails this test because Congress ratified the Court's broad interpretation of the FHA and because BoA has not given a special justification.

First, BoA has not shown why the Court's broad interpretation is invalid. BoA believes that the changes made by the Fair Housing Amendments Act of 1988 have so altered the FHA that it needs a new interpretation. Pet'rs' Br. 16. BoA is incorrect. While the 1988 Amendments shifted the location of the statutory definition of "aggrieved person" within the statute, they did not change its interpretation. *Compare* 42 U.S.C. § 3602(i) (2012), *with* Civil Rights Act of 1968, Pub. L. No. 90-284, § 810(a), 82 Stat. 85.

In discussing the definition of "aggrieved person," the House Judiciary Committee stated:

> *Aggrieved person.* Provides a definition of aggrieved person to be used under this act. In *Gladstone Realtors v. Village of Bellwood,* the Supreme Court affirmed that standing requirements for judicial and administrative review are identical under title VIII. In *Havens Realty Corp. v. Coleman,* the Court held that "testers" have standing to sue under title VIII, because Section 804(d) prohibits the representation "to any person because of race, color, religion, sex or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available." *The bill adopts as its definition language similar*

> *to that contained in Section 810 of existing law, as modified to reaffirm the broad holdings of these cases.*

H.R. Rep. No. 100-711, at 23 (1988) (emphasis added).[2] If Congress meant to restrict the interpretation of "aggrieved person," the House Judiciary Committee would not state that the "new" definition is meant "to reaffirm the broad holdings" of cases that extended the definition of "aggrieved person" to the limits of Article III. *Id.*

BoA incorrectly relies on *Thompson*'s dicta regarding Title VIII to argue that this Court should change the interpretation of "aggrieved person" so that it is consistent with Title VII. Pet'rs' Br. 13, 18, 21.[3] This Court need not follow BoA's interpretation of *Thompson*'s dicta because BoA's argument defeats itself. As *Thompson* states, "[I]t is Title VII rather than Title VIII that is before us here, and as to that

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[2] The Court has found that committee reports are a persuasive source of legislative intent. *See, e.g.*, *Brown v. Plata*, 563 U.S. 493, 526 (2011) (using a House Report to find that the Prison Litigation Reform Act did not eradicate the Court's power to place a "limit on prison populations"). Regardless, even BoA finds this report persuasive and relies on it repeatedly. Pet'rs' Br. 3, 16, 18.

[3] In quoting *Thompson*, BoA alleges that Justice Scalia called the broad interpretation of the FHA "ill-considered." Pet'rs' Br. 13, 18, 21. In fact, Justice Scalia only referred to the dicta on the interpretation of Title VII in *Trafficante*. *See Thompson*, 562 U.S. at 176 ("We now find that [*Trafficante*'s] dictum was ill-considered . . . .").

we are surely not bound by the *Trafficante* dictum." 562 U.S. at 176. Similarly, this Court is not bound by *Thompson*'s dictum. Even if the Court is persuaded by the *Thompson* dictum, it should follow it in its entirety. *Thompson* acknowledged that the current interpretation of "aggrieved person" in the FHA is "compatible with the 'zone of interests' limitation" on Title VII's "aggrieved person" language. *Id.* In other words, Justice Scalia acknowledged that "aggrieved person" under Title VIII can have a different meaning than "person aggrieved" under Title VII, given the terms' different statutory contexts. *See City of Los Angeles v. JPMorgan Chase & Co.*, No. 2:14-cv-04168-ODW(RZx), 2014 U.S. Dist. LEXIS 161164, at *15-16 (C.D. Cal. Nov. 14, 2014) (agreeing with Miami's interpretation of *Thompson*).

Second, BoA has shown no special justification to outweigh the heavy burden of stare decisis. A special justification must be an overarching policy reason that counsels a change in law, not solely an argument that the current interpretation is wrong. *Dickerson v. United States*, 530 U.S. 428, 443-44 (2000). *Dickerson*, for example, involved applying stare decisis to a constitutional holding of the Court, which bears less deference than a statutory holding. *Id.* at 431-32, 443. In keeping the *Miranda* rule in place, the Court rejected the "special justification" offered by the petitioner that a guilty defendant may go free under *Miranda* even though his or her confession was technically voluntary. *Id.* at 444. In part, the Court rejected this special justification because of years of reliance on *Miranda* by federal courts. *Id.* at 443-44.

BoA's brief is devoid of any special justification. The closest resemblance to a special justification that BoA offers is that Congress shifted enforcement

power from "aggrieved persons" to the Secretary of the Department of Housing and Urban Development and the Attorney General. Pet'rs' Br. 24. This pales in comparison to the special justification rejected in *Dickerson*. In addition, BoA's argument rests on two false assumptions. First, this is not a special justification, but BoA's divining of congressional intent. Second, it is an incorrect interpretation. Congress enhanced federal enforcement power while simultaneously enhancing the rights to sue in federal court for persons, since these sections are parallel and equal enforcement mechanisms. *See* H.R. Rep. No. 100-711, at 23 (1988) ("[T]he Supreme Court affirmed that standing requirements for judicial and administrative review are identical under title VIII. . . . The bill . . . reaffirm[s] the broad holdings of these cases."). Combined with forty-five years of precedent and reliance by every federal court, just like in *Dickerson*, this argument fails.

B. The City Is an Aggrieved Person Who May Sue Under § 3613 Because That Is the Most Faithful Reading.

The Bank asserts that the City cannot sue under § 3613 for two reasons. First, BoA claims that the heading entitled "Enforcement by private persons" prohibits FHA lawsuits under § 3613 by municipal corporations. Pet'rs' Br. 25. Second, relying on this interpretation of § 3613, the Bank asserts that "person," which is defined in part as a corporation, does not extend to municipal corporations. Pet'rs' Br. 25.

Despite BoA's attempt to exclude suits by municipalities under § 3613, the most faithful reading of § 3613's header is as a differentiator between suits

brought by federal actors, like the DOJ, and all other litigants. The most persuasive evidence of this reading is found in § 3613(c)(2). This subsection, which provides for fee-shifting, states that "[t]he United States shall be liable for such fees and costs to the same extent as a private person." § 3613(c)(2). There, the term "private person" is used to distinguish federal actors from all other litigants. This reading is further supported by the headers of § 3612 and § 3614, which provide, respectively, for "Enforcement by Secretary" and "Enforcement by Attorney General."

Beyond not being the most faithful reading of the FHA, reading "private person" as restricting municipal corporations from suing in federal court ignores years of precedent on the meaning of corporation, replaces the body of the statutory provision with its header, gives no meaning to the word "private," and creates absurd results under the FHA.

1. The Plain Meaning of "Person," Which Includes "Corporation" in Its Definition, Extends to a Municipal Corporation.

The standard presumption is that corporation in a federal statute includes municipal corporations unless otherwise stated. However, the Bank claims that even though the FHA's definition of person includes corporations, it does not include municipal corporations. Pet'rs' Br. 25. The Dictionary Act sets the standard presumption for some cases of statutory interpretation, and it defines certain terms. *See, e.g.*, 1 U.S.C. § 1 (2012) (explaining that the male pronoun in federal statutes is also presumed to include the female pronoun). Although Congress specifically

defined person in the FHA, its definition closely tracks the definition of person in the Dictionary Act. *Compare* 42 U.S.C. § 3602(d) (2012), *with* 1 U.S.C. § 1. Most importantly, both define "person" as including a corporation. *Id.*

In the first codification of the Dictionary Act, a person was defined as including "bodies politic and corporate," and the term bodies politic was found to encompass municipal corporations. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 688-89 (1978) (finding, based on an interpretation of the Dictionary Act, that "the 'usual' meaning of the word 'person' . . . extend[ed] to municipal corporations"). An 1874 recodification replaced "bodies politic and corporate" with "partnerships and corporations." *Ngiraingas v. Sanchez*, 495 U.S. 182, 190 (1990). Congress explained that its reason for the change was that "'bodies politic' is precisely equivalent to 'corporations,'" but that it wanted to limit the reading from encompassing States, Territories, and foreign governments. *Id.* at 191.

The presumption that corporations includes municipal corporations should apply here. In fact, the three circuit courts that have been squarely presented with this exact question have all found that the word corporation includes a municipal corporation. *Heights Cmnty. Cong. v. Hilltop Realty, Inc.*, 774 F.2d 135, 138-39 (6th Cir. 1995); *Chicago v. Matchmaker Real Estate Sales Ctr., Inc.*, 982 F.2d 1086, 1094-96 (7th Cir. 1992); *Hous. Auth. of Kaw Tribe of Indians v. Ponca City*, 952 F.2d 1183, 1193-95 (10th Cir. 1991). No circuit court has chosen the opposite interpretation. And, when HUD implemented the 1988 Amendments, it stated that the FHA permits "the filing of a complaint by any person or

organization which alleges that a discrimin[a]tory housing practice has occurred . . . which will result in an injury to them." Implementation of the Fair Housing Amendments Act of 1988, 54 Fed. Reg. 3232 (Jan. 23, 1989) (codified at 20 C.F.R. § 100.20). The plain meaning of corporation includes municipal corporations.

2. A Statute's Headers Cannot Replace the Detailed Provisions of Its Text.

BoA improperly attempts to replace the term "aggrieved person" in the body of § 3613 with its header, "Enforcement by private persons." But, "headings and titles are not meant to take the place of the detailed provisions of the text." *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R.*, 331 U.S. 519, 528 (1947). As such, the Court should not follow BoA's suggestion to mix § 3613's header into its text, making it read "aggrieved private person" instead of "aggrieved person."

BoA's argument also fails because "the heading of a section cannot limit the plain meaning of the text." *Id.* at 528-29; *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 222 (2012). BoA's interpretation of the statute does exactly that: BoA reads § 3613's heading to replace the definition of person in § 3602(d). As discussed *supra* in subsection I.B.1, corporation plainly includes municipal corporations. If Congress meant to limit the interpretation of corporation, it could have defined "person" as "non-governmental corporations" in § 3602(d). It did not.

3. BoA's Incorrect Interpretation Renders the Word "Private" Redundant.

BoA's argument requires taking away meaning from the word private in the FHA. A "cardinal rule of statutory interpretation [is] that no provision should be construed to be entirely redundant." *Kungys v. United States*, 485 U.S. 759, 778 (1988). Here, BoA claims that the term person is limited to private individuals and entities. Pet'rs' Br. 25. The outcome of BoA's reading would rewrite § 3613's heading to say "Enforcement by private private persons." This gives the word "private" in the heading no meaning, which cannot be done. Thus, the Bank's interpretation cannot be the correct interpretation.

4. BoA's Flawed Interpretation Creates Absurd Results Across the Statutory Scheme.

This Court should not restrict municipalities from suing under § 3613 because of the absurd consequences that would result in the FHA. As *Gladstone* stated and Congress reaffirmed, § 3610 and § 3613 "provide parallel remedies to precisely the same prospective plaintiffs." 441 U.S. at 108; H.R. Rep. No. 100-711, at 23 (1988). BoA's interpretation directly contradicts this precedent.

BoA claims that the header in § 3613 allows suit only for private individuals and entities. Pet'rs' Br. 25. In coming to this conclusion, BoA relies exclusively on the term "private person." Pet'rs' Br. 25. This term only appears in § 3613. That means this restriction does not apply to any other part of the FHA. This flawed interpretation not only contradicts

this Court's holding in *Gladstone* that the administrative and judicial remedies must reach the same plaintiffs, but also creates absurd results in the FHA statutory scheme.

One glaring example is that a municipality would be able to bring a complaint before HUD under § 3610 but would be restricted by § 3613 from bringing that same complaint in federal court. *See* 42 U.S.C. § 3610(a)(1)(A)(i) (2012) (allowing an "aggrieved person" to file a complaint with the HUD Secretary without any reference to a "private person"). This is absurd for two reasons. First, it involves Congress, in silence, taking away the right of municipalities to ever have their complaints heard before a federal court. BoA fails to explain why Congress would do this, and it cannot because Congress reaffirmed *Gladstone* when it amended the FHA. This was clearly not Congress's intent.

In addition, BoA's interpretation forces a municipality, the very entity that is expected to uphold the law, to go through the administrative process and have the DOJ bring suit in federal court on its behalf. This defies good sense. It also possibly forces the one entity that has the resources to handle this sort of complex litigation to take a free ride on the federal government's dime. Again, BoA cannot logically explain why Congress would use such a strange method. Therefore, this Court should not adopt BoA's reading of § 3613 to restrict suit by municipal corporations.

C. Miami's Economic Injury Based on Discriminatory Lending Is Cognizable Under the FHA.

The City pleads economic harm based on discriminatory conduct, which is the same harm that was alleged in both *Gladstone* and *Havens* and was found to state a claim under the FHA. Article III injury in fact is the *maximum* requirement to bring a claim under the FHA. *See Havens*, 455 U.S. at 376-77 (requiring only Article III injury in fact to state a claim). Article III injury in fact merely requires an injury that is "concrete, particularized, and actual or imminent." *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1147 (2013) (quotations and citations omitted).

This Court has already approved FHA claims for economic injury to entities in both *Gladstone* and *Havens*. In *Gladstone*, the Village of Bellwood alleged injury based on racial steering by realtors in the suburbs of Chicago. 441 U.S. at 95. In discussing the effects of racial steering on the Village, the Court stated that "[a] significant reduction in property values directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services." *Id.* at 110-11.[4] In *Havens*, a non-profit organization, HOME, alleged that it suffered economic harm because it "had to devote significant resources to

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[4] BoA argues that the Court permitted the suit due to the confluence of economic and social harm to the Village in *Gladstone*. Pet'rs' Br. 20. The Court would not say that a "reduction in property values directly *injures* a municipality" if that was not an injury sufficient to satisfy the FHA. 441 U.S. at 110-11 (emphasis added).

identify and counteract the defendant's [sic] racially discriminatory steering practices." 455 U.S. at 379 (citation omitted). Even though it was "broadly alleged," the Court held that "there can be no question that the organization has suffered injury in fact." *Id.*

Here, Miami alleges economic harm based on BoA's discriminatory lending practices. BoA does not dispute that it engaged in racial discrimination against borrowers. Former employees from the Bank's Miami office confirm BoA's discriminatory lending practices. One witness stated that BoA "paid its employees more for steering minorities into predatory loans." J.A. 218. Another witness stated that BoA encouraged loan officers to offer FHA loans with worse terms because "there's no money" in CRA loans, which would have "allowed borrowers to obtain large grants for the down payments and closing costs." J.A. 219. As detailed in Section II, this discrimination caused foreclosures, a loss in property tax revenues, and diverted funds to maintaining vacant properties.

Just like racial steering, "steering minorities into predatory loans" can have disastrous economic effects on a community. J.A. 218. The foreclosures significantly decrease the property tax base and depress housing values in neighboring properties. J.A. 235-39. This is exactly the injury that the Village suffered in *Gladstone*. Moreover, providing extra services for the properties that were the subject of BoA's predatory lending even more directly threatens Miami's "ability to bear the costs of local government and to provide services." *Gladstone*, 441 U.S. at 110-11. This is also an injury. Unless the Court overrules *Gladstone*, there is no reasoned approach to distinguishing between this case and precedent.

BoA incorrectly believes that a city recovering lost tax revenues was not a focus of the FHA. Pet'rs' Br. 23. As BoA admits, Congress adopted and followed the Kerner Commission's Report in enacting the original version of the FHA. Pet'rs' Br. 22. The Kerner Commission Report cited taxes and the costs of municipal services as concerns since "deterioration of [the] already inadequate municipal tax bases in the face of increasing demands for public services, and continuing unemployment and poverty among the urban Negro population" marks "[t]he future of . . . cities, and their burgeoning Negro population, [a]s grim." Kerner Commission Report, Cong. Rec. 4830, 4839 (Mar. 1, 1968). This was, and remains, a serious concern of the FHA.

II. THE CITY ADEQUATELY PLEADED CAUSATION.

The City adequately pleaded a sufficient chain of causation. The FHA allows "aggrieved person[s]" to sue if they have been or will be injured "*by* a discriminatory housing practice." § 3602(i)(1)–(2) (emphasis added); § 3613(a)(1)(A). However, the statute's proximate cause requirement does not inherently incorporate any particular standard. *See CSX Transp., Inc. v. McBride*, 564 U.S. 685, 692 (2011). Proximate cause is merely "shorthand" for the notion that "injuries have countless causes, and not all should give rise to legal liability." *Id.* Whether prohibited conduct is sufficiently close to a complainant's injury "is controlled by the nature of the statutory cause of action." *Lexmark*, 134 S. Ct. at 1390.

Here, the Court does not need to decide a proximate cause standard because this Court's decision in

Gladstone should control, as discussed *supra* in subsection I.C. Even if this Court does draw on tort law standards, a foreseeability standard is more consistent with the FHA than a directness standard. BoA's factual attack based on alternative causal theories should be ignored on this 12(b)(6) motion to dismiss because the Court must accept the facts in the Complaint as true. *Iqbal*, 556 U.S. at 678.

A. BoA's Discriminatory Lending Practices Caused Foreseeable Harms to Miami.

Miami stated an FHA claim against the Bank under tort principles of proximate cause since the City's injuries were foreseeable results of BoA's discrimination. An FHA suit "is, in effect, a tort action." *Meyer v. Holley*, 537 U.S. 280, 285 (2003). As such, this Court assumes that Congress "legislates against a legal background" of ordinary tort rules and implicitly incorporates them, unless there is evidence that Congress intended otherwise. *Id.* *Gladstone* interpreted the FHA and found that Congress intended to confer a private right of action based on a causal chain nearly identical to the one that the City pleaded here. *See Gladstone*, 441 U.S. at 110-11. Ordinary tort rules nevertheless lead to the same conclusion: the City's claim is cognizable.

Proximate cause "preclude[s] liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity." *Paroline v. United States*, 134 S. Ct. 1710, 1719 (2014). The inquiry "often" asks whether the harm to the plaintiff was a foreseeable risk of the defendant's misconduct. *See id.* (concluding that foreseeability is usually the standard for

proximate cause and nevertheless finding that both foreseeability and directness were met).

BoA misquotes the Dobbs treatise for the proposition that foreseeability of harm is necessary but not sufficient to show proximate cause. Pet'rs' Br. 39. That section of the treatise states the required showing for the "breach of duty" element of a negligence claim, not for proximate cause. Dan B. Dobbs et al., *Hornbook on Torts* 265 (2d ed. 2000). The treatise concludes that duty and causation "are not . . . interchangeable." *Id.* at 343; *see also, e.g.*, *CSX*, 564 U.S. at 703 (distinguishing the use of foreseeability to prove that a duty exists from the use of foreseeability to establish that proximate cause is met). Ordinarily, foreseeability of harm is necessary and sufficient for proximate cause. *See* Dobbs et al., *supra* at 343 ("The most general and pervasive approach to . . . proximate cause holds that a . . . defendant is liable for all the general kinds of harms he foreseeably risked by his negligent conduct . . . .").

Here, BoA had the data and the tools to foresee that its predatory loans would lead to foreclosures. BoA uses "sophisticated underwriting technology and data that allows it to predict with precision the likelihood of a foreclosure." J.A. 184. Based on the Bank's data on loan originations in Miami from 2004 to 2012, BoA's loans to predominantly minority neighborhoods were 5.857 times more likely to result in foreclosure than loans in majority-white neighborhoods. J.A. 183, 229. Even more, when minority homeowners sought to refinance BoA's predatory loans because of the onerous terms they received, BoA risked foreclosures by refusing to extend credit entirely or on terms equal to those offered to similarly-situated white borrowers.

J.A. 183, 221. Foreclosure was the obvious result of refusing to refinance.

BoA did not merely have the ability to foresee these harms; it actually knew that its predatory loans would result in foreclosures. Former employees from BoA's Miami office explained that the Bank knew minority borrowers did not understand the terms of their loans and could not afford them. J.A. 217-21. Nevertheless, incentivized by the opportunity to profit, the Bank steered minority borrowers into predatory loans that were bound to fail. J.A. 184, 218-19. The "inevitable result" was foreclosure. J.A. 183.

Risking concentrated foreclosures also risked foreseeable economic damage to Miami. Well-known research showed that the City would suffer from decreased tax revenues and increased costs of municipal services. J.A. 188, 211-12, 236, 241-42. In fact, decades ago, both the Kerner Commission and this Court thought these very injuries were probable consequences of discriminatory housing practices. *See Gladstone*, 441 U.S. at 110-11; Kerner Commission Report, Cong. Rec. 4830, 4839 (Mar. 1, 1968) (recognizing harms arising because of discrimination, such as the "deterioration of [the] already inadequate municipal tax bases in the face of increasing demands for public services").

While BoA claims the "harm to the city was unforeseeable," that section of BoA's brief merely discusses the foreseeability of the housing market collapse. Pet'rs' Br. 38-40. It misses the point. BoA does not dispute that predatory loans foreseeably result in foreclosures. Pet'rs' Br. 38-40. BoA should have foreseen—indeed, it knew—the consequences of its actions: originating predatory loans that minority

borrowers could never repay would lead to foreclosures, simultaneously injuring the City.

B. The FHA Does Not Require Directness.

The Court should not read a directness standard into the FHA's proximate cause requirement. Even though this Court has concluded that directness was appropriate in other statutory contexts, it has acknowledged that directness and foreseeability are "two of the 'many shapes [proximate cause] took at common law.'" *Hemi Grp., LLC v. City of N.Y.*, 559 U.S. 1, 12 (2010) (alteration in original) (quoting *Holmes v. Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 268 (1992)). Here, a directness standard should not apply because it is incompatible with the underlying purpose of the FHA.

1. A Directness Standard Cannot Apply to the FHA Because This Court Has Previously Permitted Derivative Claims.

Directness is not the appropriate standard for causation because the statute does not require that an FHA plaintiff be the immediate victim of discrimination. The private right of action "serves an important role" because it protects "not only those against whom . . . discrimination is directed," but also those that are injured as a result. *Trafficante*, 409 U.S. at 211. As such, in *Gladstone*, the Village of Bellwood could sue for its injury, even though it did not allege that the defendant realty corporation discriminated against it. 441 U.S. at 110. And in *Havens*, a non-profit could proceed, despite alleging

harm based on discrimination against others. 455 U.S. at 379.

The distinction between direct and indirect injuries is "of little significance" in deciding whether a plaintiff can sue under the FHA's private right of action. *Id.* at 375. At the pleading stage, "[t]he central issue . . . is not who possesses the legal rights protected by" § 3604, the provision that lists the prohibitions against discrimination in the sale or rental of housing. *Id.* at 376 n.16 (quoting *Gladstone*, 441 U.S. at 103 n.9). Rather, the issue is whether an FHA plaintiff is "genuinely injured by conduct that violates *someone's* § [3604] rights." *Id.* (emphasis in original).

BoA relies on this Court's proximate cause analysis in the RICO, the Lanham Act, and the Clayton Act contexts since those statutes contain similar wording. Pet'rs' Br. at 27-30.[5] It claims that the directness standard as applied in those statutory contexts counsels that the City cannot sue under the FHA since the City's injuries derive from BoA's discrimination against its residents. *Id.* However, for those similarly-worded statutes, the Court acknowledged that the plain reading of the statutory

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[5] BoA supports its assertion that proximate cause requires excluding derivative injuries by quoting the Prosser & Keeton torts treatise. Pet'rs' Br. 27. But, the page of the treatise that BoA cites goes on to say that when proximate cause is assessed through the lens of directness, the scope of liability extends to "all 'direct' consequences and those *indirect consequences* that are foreseeable." W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* 273 (5th ed. 1984) (emphasis added).

language provided for a broad causation standard, but it found that congressional intent only permitted a narrower set of lawsuits. *See Lexmark*, 134 S. Ct. at 1390 (Lanham Act); *Holmes*, 503 U.S. at 265 (RICO); *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 529 (1983) (Clayton Act).

For the FHA, Congress expressed a different intent. The entire Court in *Gladstone*, including the dissent, agreed that the language giving rise to the statute's causation requirement—any persons injured "by a discriminatory housing practice"—provides a right of action for indirect victims of housing discrimination. *See* 441 U.S. at 103; *id.* at 121 (Rehnquist, J., dissenting). When Congress amended the FHA in 1988, it expressly incorporated the "by a discriminatory housing practice" language into the FHA's private right of action. *See* § 3602(i); § 3613(a)(1). Congress approved of *Gladstone* when it did. H.R. Rep. No. 100-711, at 23 (1988).

2. The Principles Underlying a Directness Requirement Do Not Apply to the FHA.

The principles supporting a directness requirement weigh against its application to the FHA. First, directness is "especially warranted" when injured victims can be counted on to vindicate the law as private attorneys general. *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457-460 (2006). For the FHA, a HUD report explained that because "less easily detectable forms of discrimination" persist and "are very difficult for victims to detect, enforcement strategies should not rely primarily on individual complaints of suspected discrimination." U.S. Dep't of

Hous. & Urban Dev., *Housing Discrimination Against Racial and Ethnic Minorities, Executive Summary* 13 (2012), http://tinyurl.com/hcfnzfn.

Second, directness is premised on the difficulty in apportioning damages between different causes and the risk of duplicative recoveries. *Anza*, 547 U.S. at 457-61. Here, the apportioning of damages will not be difficult because the City pleaded specific properties that foreclosed, and regression analysis can identify the City's losses attributable to BoA's discrimination, as opposed to other factors. J.A. 237-39, 242-43. Furthermore, this suit does not risk duplicative recoveries because only the City is injured by decreased property tax revenues and increased costs of municipal services.

Even if damages are difficult to apportion or assess, that prudential consideration should not override Congress's intent to reject a directness requirement. *See Lexmark*, 134 S. Ct. at 1388 (stating that the Court cannot use its own policy judgment to "limit a cause of action that Congress has created"). Moreover, the City seeks other remedies, including an injunction, which BoA does not address in its argument. If this Court concludes damages will be too difficult to assess, that does not merit dismissal: "even when a plaintiff cannot quantify its losses with sufficient certainty to recover damages, it may still be entitled to injunctive relief." *Id.* at 1377.

Third, BoA asserts too many lawsuits will be brought in the absence of a directness requirement. Pet'rs' Br. 28-29. It has been almost forty years since *Gladstone* was decided, yet BoA does not offer any evidence showing the federal courts have been flooded with FHA litigation.

BoA's suggestion that a "state could bring suit any time anything taxable declined in value" ignores the statutory requirements for bringing an FHA claim. Pet'rs' Br. 29. To bring a successful claim under the FHA, a plaintiff must plead that discrimination occurred, not merely economic harm. Although BoA does not contest the first causal link in the City's claim—discrimination against Blacks and Latinos—establishing that initial link will often be a difficult barrier for FHA plaintiffs. Furthermore, the FHA contains a two-year statute of limitations to limit the number of suits. § 3613(a)(1)(A). The principles underlying the directness standard do not weigh in favor of its application to the FHA.

3. Even If Directness Is Required, the City's Injury Is Sufficiently Direct.

The City adequately pleaded proximate cause, even if this Court draws on cases applying directness, because its injuries are closely connected to BoA's discrimination. *Lexmark* acknowledged that under the directness standard, derivative injury can be cognizable when it is bound up in the direct injury caused. *Lexmark*, 134 S. Ct. at 1394. In *Lexmark*, the Court found that a printer company's false advertising about a remanufacturer of ink cartridges proximately caused injury to a supplier of microchips. 134 S. Ct. at 1394. The Court reasoned that since the printer company's false advertising caused the remanufacturer to sell fewer cartridges, that necessarily injured the supplier by reducing the number of microchips that the supplier sold to the remanufacturer. *Id.*

Here, the City's claim is intricately linked to the foreclosures caused by BoA. Every time BoA's

predatory loans lead to foreclosures, the City necessarily suffers from decreased tax revenue, as well as increased costs of municipal services. The City is unlike an ordinary commercial party suffering derivative harm. *See* Pet'rs' Br. 28-29. Its injuries are bound up in BoA's violation of the statute. *See Gladstone*, 441 U.S. at 110-11 (racial steering that leads to "[a] significant reduction in property values *directly* injures a municipality" (emphasis added)).

C. BoA's Factual Attack on the Complaint's Causal Chain Fails.

In this case, the City alleges a straightforward causal chain: BoA (1) discriminated against minorities when providing loans, which (2) caused Black and Latino residents to enter into foreclosure, which, in turn, (3) diminished the City's property tax revenues and increased its costs of municipal services. BoA attempts to factually attack links (2) and (3) by claiming the economy, rather than it, caused the City's harms. First, those arguments are improperly raised on a motion to dismiss since the facts in the Complaint should be taken as true. Second, the economy should not be treated as an intervening cause in this case because market forces are foreseeable and because BoA contributed to the risk of the economic crisis.

1. A Factual Attack Is Inappropriate on a Motion to Dismiss.

The Complaint pleads a plausible theory of causation since the factual allegations in a complaint should be taken as true on a 12(b)(6) motion to dismiss. *Iqbal*, 556 U.S. at 678. While a complaint

must be plausible, the pleading standard is not supposed "to impose a great burden on a plaintiff." *Dura*, 544 U.S. at 347. A plaintiff suffering economic injury merely needs to indicate the loss and the causal connection in mind. *Id.*; *see also Twombly*, 550 U.S. at 557 (citing *Dura*, 544 U.S. at 347).

BoA's two-fold factual attack on the City's causal chain is improper on a motion to dismiss. First, BoA incorrectly argues that the second link in the City's causal chain—that foreclosures resulted from BoA's discrimination—is not plausible. Pet'rs' Br. 32. It claims that the 2008 economic crisis, job losses, and negative equity mortgages are "more likely" explanations. Pet'rs' Br. 32. BoA has merely offered general, speculative theories about what caused the 3,326 specific foreclosures identified in the Complaint. J.A. 242. Although a plaintiff must "articulate facts . . . that show that the plaintiff has stated a claim entitling [it] to relief," the plausibility standard is "not akin to a probability requirement." *Iqbal*, 556 U.S. at 678; *cf. Fin. Guar. Ins. Co. v. Putnam Advisory Co., LLC*, 783 F.3d 395, 404 (2d Cir. 2015) (concluding that whether the "market downturn" intervened and broke the chain of causation was "a matter of proof at trial and not to be decided on a Rule 12(b)(6) motion to dismiss"); *Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.*, 793 F. Supp. 2d 1138, 1144-45 (C.D. Cal. 2011) (holding that whether Countrywide's "alleged corrective disclosures caused the drop in the Debentures' value, as opposed to

macroeconomic events, is a factual question that cannot be resolved at the motion to dismiss stage").[6]

Second, BoA only partially attacks the last causal link in the City's claim—that foreclosures lead to decreased tax revenue and increased costs of municipal services. BoA does not dispute, and therefore concedes, that property foreclosures lead to decreased tax revenue. It also does not dispute that vacant homes increase municipal costs since the City must address public health and safety concerns associated with vacant properties. The decreased tax revenue and increased costs of municipal services are direct and foreseeable injuries to the City, so they are sufficient to complete the causal chain.

BoA, however, attacks a different part of the last causal link, claiming it is not plausible that foreclosures due to BoA's discriminatory lending led to decreases of *all* property values in the City. Pet'rs' Br. 34-35. That argument attacks a claim that the City did not bring. The City seeks damages from tax revenues based only on the 3,326 specific properties that declined in value because of foreclosure, and on the decline in value of neighboring properties attributable to those specific foreclosures. J.A. 237-39,

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[6] BoA faults the Eleventh Circuit because its opinion is "devoid of *any* discussion of the global housing market collapse, not once discussing the fundamental economic forces of this case." Pet'rs' Br. 31. The Eleventh Circuit, however, noted the district court's consideration of "the background factors of a cratering economy" and nevertheless concluded the City's claim was plausible based on the facts in the Complaint. J.A. 33-34. Because this case arrives on a motion to dismiss, that conclusion was correct.

242-43. Miami pleaded empirical research and regression analysis confirming that it is plausible that foreclosures have effects on the values of nearby properties and that it is possible to quantify that effect. J.A. 211, 237-39. The extent of the effects of specific foreclosures on neighboring properties is a matter for trial.

2. Macroeconomic Forces Are Not Intervening Causes That Break the City's Causal Chain.

BoA seeks to blame the economy to escape from liability stemming from its own discrimination. That argument is flawed for two reasons. First, market fluctuations do not and should not break the causal chain in FHA claims because that is inconsistent with the statute's purpose. Second, BoA contributed to the market downturn, so the economic event cannot be treated as an intervening actor in this case.

BoA's theory that macroeconomic forces break the causal link between BoA's discriminatory lending and foreclosures should be rejected as a matter of law because it is untethered from the FHA. When defining a statute's proximate cause standard, the Court must effectuate the statute's purpose, not apply tort law mechanically. *Paroline*, 134 S. Ct. at 1729.

Here, BoA's theory of intervening economic forces is incompatible with the statute because it immunizes discriminatory actors from liability in the very economic circumstances that precipitated the statute. The FHA was passed when economic factors and discriminatory practices, including redlining, combined to produce "considerable social unrest." *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2516 (2015). In response,

President Johnson established the Kerner Commission, which, "[a]fter extensive factfinding," identified residential segregation, unequal housing, and economic conditions in inner cities as "underlying causes" of the social unrest. *Id.* To reverse a deepening racial divide, the Commission conceptualized the FHA. *Id.* If the presence of "macroeconomic forces" defeats the cognizability of an FHA claim, the Act was dead upon passage. BoA's theory is incompatible with the broad and remedial purpose of the statute.

In addition, BoA does not dispute that if an intervening cause is foreseeable, it does not break the causal chain. Pet'rs' Br. 32. This Court has found in another statutory context that market forces do not break the causal chain between the violation of a statute regulating mortgage lending and a complainant's injury. *Robers v. United States*, 134 S. Ct. 1854, 1856 (2014). Because property value fluctuations "are common[, t]heir existence . . . is foreseeable," even though the direction and amount of fluctuations may vary. *Id.* For proximate cause, "[m]arket fluctuations are normally unlike . . . an unexpected natural disaster." *Id.* at 1859. Contrary to BoA's description, the market fluctuations of the economy are not treated like a "flood." Pet'rs' Br. 32. According to this Court, market forces cannot break the causal chain—not even the "falling real estate market" in 2008. *Id.* at 1856-59.

Even if this Court finds it appropriate to accept as true that the economy "intervened" to cause foreclosures, the Bank's discriminatory lending contributed to the housing downturn, so the causal chain did not break. Intervening causes, even criminal acts by third parties, do not sever the causal

chain if they are part of the risk created by a defendant's wrongful conduct. *See Lillie v. Thompson*, 332 U.S. 459, 462 (1947) (per curiam); *Aetna Ins. Co. v. Boon*, 95 U.S. 117, 130 (1877).

BoA's widespread abusive lending plausibly contributed to the housing market downturn. A HUD report concluded that "no small part of the increase [in foreclosures] stems from recent increases in abusive forms of subprime lending," and BoA's lending practices are no exception. J.A. 196, 200-10. In Miami, BoA is one of the largest mortgage lenders, and its policy of issuing abusive loans to minority communities contributed to the credit crisis in the City. J.A.182-83. BoA was part and parcel of the housing market collapse. *Cf. In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132, 1174 (C.D. Cal. 2008) (concluding that a complaint's allegations "invite the cogent and compelling inference that Countrywide's deteriorating lending standards were causally linked to at least some of the macroeconomic shifts of the past year"). Therefore, macroeconomics do not break the causal chain.

3. The City Adequately Pleaded But-For Causation.

The City adequately pleaded but-for causation: had minority borrowers received non-predatory terms like similar white borrowers, their homes would not have entered into foreclosure, or they would not have foreclosed as quickly. J.A. 232-34. The Complaint buttresses these plausible allegations with regression analysis, a method that this Court has approved of in antidiscrimination cases. *See Bazemore v. Friday*, 478 U.S. 385, 400 (1986) ("[R]egression analysis that includes less than 'all measurable variables' may

serve to prove a plaintiff's case." (citation omitted)); *see also Zenith Elecs. Corp. v. WH-TV Broad. Corp.*, 395 F.3d 416, 419 (7th Cir. 2005) ("[S]ocial science has tools to isolate the effects of multiple variables and determine how they influence one dependent variable . . . . Perhaps the leading tool is the multivariate regression, which is used extensively by all social sciences.").

The City's regression analyses of BoA loans issued in Miami from 2004 to 2012 showed, controlling for objective risk characteristics, that a predatory loan is plausibly a but-for cause of foreclosure for minority borrowers. For instance, for Latinos, a predatory loan was 2.861 times more likely to result in foreclosure than a non-predatory loan made to a white borrower with similar borrowing characteristics. J.A. 234.

BoA incorrectly concluded that it is "impossible" to prove the but-for cause of the foreclosures in Miami. Pet'rs' Br. 33; *cf. Swiff-Train Co. v. United States*, 793 F.3d 1355, 1358 (Fed. Cir. 2015) (finding that the U.S. International Trade Commission performed a proper causal analysis to conclude that but for unfair wood flooring imports from China, certain manufacturers would have been "better off during the housing market collapse").

Even if it is impossible to show but-for causation, BoA's point merely proves that but-for causation should not apply in this case. When multiple causes are sufficient for an injury—or when they are independently insufficient but combine to produce an injury—the law sometimes treats multiple causes as but-for causes of the harm. *Burrage v. United States*, 134 S. Ct. 881, 890 (2014); *Paroline*, 134 S. Ct. at 1723. The purpose of alternative but-for causal standards in tort law is to prevent tortfeasors from

escaping liability merely because the complexity of the action makes it impossible to identify a but-for cause. *Paroline*, 134 S. Ct. at 1724. This is consistent with tort law principles under which Congress is assumed to legislate. *See id.* at 1727 ("The availability of alternative causal standards where circumstances warrant is, no less than the but-for test . . . part of the background legal tradition against which Congress has legislated.").

Here, the City pleaded that BoA's predatory loans to minorities were sufficient to cause foreclosures, or that BoA's lending combined with other economic events to lead to foreclosures. BoA originated loans that it knew minority homeowners could not pay. J.A. 217-21. When those homeowners sought to refinance, the Bank either refused completely or provided minorities with less favorable terms than similarly-situated white homeowners. J.A. 180-82, 220-21. Even if predatory loans cannot be isolated from other factors, the facts in the Complaint permit a plausible inference that BoA's predatory loans were a but-for cause under principles of tort law.

CONCLUSION

The City of Miami respectfully requests that this Court affirm the decision of the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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APPENDIX

42 U.S.C. § 3602 (2012)

§ 3602. Definitions

As used in this subchapter--

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Handicap" means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).

(i) "Aggrieved person" includes any person who--

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

(j) "Complainant" means the person (including the Secretary) who files a complaint under section 3610 of this title.

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with--

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(l) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(n) "Respondent" means--

(1) the person or other entity accused in a complaint of an unfair housing practice; and

(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 3610(a) of this title.

(o) "Prevailing party" has the same meaning as such term has in section 1988 of this title.

42 U.S.C. § 3604 (2012)

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful--

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes--

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that--

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set

forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term "covered multifamily dwellings" means--

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

42 U.S.C. § 3605 (2012)

§ 3605. Discrimination in residential real estate-related transactions

(a) In general

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) "Residential real estate-related transaction" defined

As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance--

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) Appraisal exemption

Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

42 U.S.C. § 3610 (2012)

§ 3610. Administrative enforcement; preliminary matters

(a) Complaints and answers

(1)(A)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such a complaint--

(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this subchapter;

(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such

respondent of the procedural rights and obligations of respondents under this subchapter, together with a copy of the original complaint;

(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

(2)(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written

notice, under paragraph (1), to such person, from the Secretary.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative report and conciliation

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this subchapter.

(5)(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing--

(i) the names and dates of contacts with witnesses;

(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(iii) a summary description of other pertinent records;

(iv) a summary of witness statements; and

(v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to comply with conciliation agreement

Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 3614 of this title for the enforcement of such agreement.

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this

subchapter without the written consent of the persons concerned.

(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt judicial action

(1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this subchapter, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 3612 of this title.

(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any respondent under sections 3614(a) and 3614(c) of this title or for proceedings by any governmental licensing or supervisory

authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Referral for State or local proceedings

(1) Whenever a complaint alleges a discriminatory housing practice--

(A) within the jurisdiction of a State or local public agency; and

(B) as to which such agency has been certified by the Secretary under this subsection;

the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless--

(A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;

(B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or

(C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

(3)(A) The Secretary may certify an agency under this subsection only if the Secretary determines that--

(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;

(ii) the procedures followed by such agency;

(iii) the remedies available to such agency; and

(iv) the availability of judicial review of such agency's action;

are substantially equivalent to those created by and under this subchapter.

(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

(4) During the period which begins on September 13, 1988, and ends 40 months after September 13, 1988, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this subchapter on the day before September 13, 1988, shall for the purposes of this subsection be considered certified under this subsection with respect to those

matters for which such agency was certified on September 13, 1988. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

(g) Reasonable cause determination and effect

(1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(2)(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 3612 of this title.

(B) Such charge--

(i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(ii) shall be based on the final investigative report; and

(iii) need not be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 3614 of this title, instead of issuing such charge.

(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The

Secretary shall make public disclosure of each such dismissal.

(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(h) Service of copies of charge

After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section 3612(a) of this title and the effect of such an election, to be served--

(1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

(2) on each aggrieved person on whose behalf the complaint was filed.

42 U.S.C. § 3612 (2012)

§ 3612. Enforcement by Secretary

(a) Election of judicial determination

When a charge is filed under section 3610 of this title, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to

have the claims asserted in that charge decided in a civil action under subsection (o) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under section 3610(h) of this title or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative law judge hearing in absence of election

If an election is not made under subsection (a) of this section with respect to a charge filed under section 3610 of this title, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 3610 of this title. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of Title 5. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of parties

At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 3611 of this title. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to

the presentation of evidence in such hearing as they would in a civil action in a United States district court.

(d) Expedited discovery and hearing

(1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The Secretary shall, not later than 180 days after September 13, 1988, issue rules to implement this subsection.

(e) Resolution of charge

Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) Effect of trial of civil action on administrative proceedings

An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of

Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(g) Hearings, findings and conclusions, and order

(1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent--

(A) in an amount not exceeding $10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(B) in an amount not exceeding $25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

(C) in an amount not exceeding $50,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge;

except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this subchapter.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Secretary shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review)--

(A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

(B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Secretary shall send a copy of each such order to the Attorney General.

(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The Secretary shall make public disclosure of each such dismissal.

(h) Review by Secretary; service of final order

(1) The Secretary may review any finding, conclusion, or order issued under subsection (g) of this section. Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.

(2) The Secretary shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) Judicial review

(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of Title 28.

(2) Notwithstanding such chapter, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred, and filing of the petition for review shall be not later than 30 days after the order is entered.

(j) Court enforcement of administrative order upon petition by Secretary

(1) The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have

occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.

(2) The Secretary shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k) Relief which may be granted

(1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may--

(A) grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;

(B) affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(C) enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the administrative law judge may intervene in the court of appeals.

(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(l) Enforcement decree in absence of petition for review

If no petition for review is filed under subsection (i) of this section before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement--

(1) which is filed by the Secretary under subsection (j) of this section after the end of such day; or

(2) under subsection (m) of this section.

(m) Court enforcement of administrative order upon petition of any person entitled to relief

If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i) of this section, and the Secretary has not sought enforcement of the order under subsection (j) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) Entry of decree

The clerk of the court of appeals in which a petition for enforcement is filed under subsection (l) or (m) of this section shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.

(o) Civil action for enforcement when election is made for such civil action

(1) If an election is made under subsection (a) of this section, the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of Title 28.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 3613 of this title. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 3613 of this title shall also accrue to that aggrieved person in a civil action under this

subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) Attorney's fees

In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of Title 5 or by section 2412 of Title 28.

42 U.S.C. § 3613 (2012)

§ 3613. Enforcement by private persons

(a) Civil action

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 3610(a) of this title and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

(b) Appointment of attorney by court

Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may--

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) of this section without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) Relief which may be granted

(1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a) of this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

(d) Effect on certain sales, encumbrances, and rentals

Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without

actual notice of the filing of a complaint with the Secretary or civil action under this subchapter.

(e) Intervention by Attorney General

Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 3614(e) of this title in a civil action to which such section applies.

42 U.S.C. § 3614 (2012)

§ 3614. Enforcement by Attorney General

(a) Pattern or practice cases

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(b) On referral of discriminatory housing practice or conciliation agreement for enforcement

(1)(A) The Attorney General may commence a civil action in any appropriate United States district court

for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 3610(g) of this title.

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 3610(c) of this title.

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 3610(c) of this title.

(c) Enforcement of subpoenas

The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this subchapter, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d) Relief which may be granted in civil actions under subsections (a) and (b)

(1) In a civil action under subsection (a) or (b) of this section, the court--

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter;

(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) may, to vindicate the public interest, assess a civil penalty against the respondent--

(i) in an amount not exceeding $50,000, for a first violation; and

(ii) in an amount not exceeding $100,000, for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of Title 28.

(e) Intervention in civil actions

Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which

involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 3613 of this title.

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(g) and (h), as modified by the Keedy Cup Rules, counsel for Respondent certifies that this document contains 9,504 words within 40 pages, excluding the parts exempted by Supreme Court Rule 33.1(d).

Respondent declares under penalty of perjury that the foregoing is true and correct.

/s/ Andrew D'Aversa
/s/ Aaseesh Polavarapu

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Counsel for Respondent

DATED: November 4, 2016