Nos. 15-1111 & 15-1112

IN THE

Supreme Court of the United States

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

v.

CITY OF MIAMI, FLORIDA,
Respondent.

ON WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF OF AMICI CURIAE AARP AND AARP FOUNDATION IN SUPPORT OF RESPONDENT

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INTERESTS OF AMICI CURIAE[1]

AARP is a nonprofit, nonpartisan organization dedicated to fulfilling the needs and representing the interests of people age fifty and older. AARP fights to protect older people's financial security, health, and well-being. AARP's charitable affiliate, AARP Foundation, creates and advances effective solutions that help low-income individuals fifty and older secure the essentials. Among other efforts, AARP and AARP Foundation advocate for the elimination of discrimination in housing and for the availability of affordable, accessible, and appropriate housing through the vigorous enforcement of fair housing laws. For example, AARP Foundation attorneys litigate on behalf of plaintiffs to challenge practices that violate the Fair Housing Act (FHA), 42 U.S.C. § 3601 *et seq*. *See, e.g.*, *Mt. Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly,* 658 F.3d 375 (3d Cir. 2011), *cert. granted,* 133 S. Ct. 2824 (2013), *cert. dismissed*, 134 S. Ct. 636 (2013). AARP and the AARP Foundation also participate in such cases as amici curiae. *See, e.g.*, *Texas Dep't of Hous. and Cmty. Affairs v. Inclusive Cmty's Project, Inc.*, 135 S. Ct. 2507 (2015).

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[1] Pursuant to Supreme Court Rule 37.6, counsel for amici represent that no counsel for a party authored this brief in whole or in part and that none of the parties or their counsel, nor any other person or entity other than amici, its members or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of amicus briefs and have filed letters reflecting their blanket consent with the Clerk.

AARP and AARP Foundation submit this brief because low income, older and minority homeowners and neighborhoods are disproportionately harmed by discriminatory lending. Discriminatory lending is one of the barriers to fair housing that cities are required to address by the United States Department of Housing and Urban Development (HUD) to comply with the FHA and to receive HUD funding. If standing under the FHA is narrowed such that cities are unable to challenge discriminatory conduct, which not only harms the residents of its neighborhoods and communities, but also economically harms the city, Congress's intent in enacting the FHA, to end segregation and create truly integrated living patterns, will be frustrated. In addition, cities will be unable to use litigation as a strategy to meet their affirmatively furthering fair housing obligations under the FHA, and their distressed neighborhoods likely will spiral into further decline.

AARP and AARP Foundation have a strong interest in participating in this case because they fight to protect the financial security of older people and advocate for adequate housing that is affordable and meets the needs of the burgeoning population of older people. The financial security of older people, eighty percent of whom are homeowners, is threatened by discriminatory lending practices because older people are particularly vulnerable to and targeted by lending practices that violate the FHA, such as those challenged in this case.

SUMMARY OF ARGUMENT

The vast majority of older Americans are homeowners. Older Americans seek to rely on their homes for financial security in their later years when their incomes may be fixed. The equity in a home that has accumulated over time can be used as a financial asset to meet needs that affect quality of life as one ages, including health care and home repairs. Unfortunately, older homeowners, and especially older minority homeowners, are at disproportionate risk of losing their homes because of predatory subprime lending and its effects.

Predatory lenders profit from targeting vulnerable borrowers for loans that have more expensive or less favorable terms than those for which the homeowners are qualified. These unfavorable terms make older and minority homeowners are more likely to fall behind on mortgage payments, and, inexorably, to face foreclosure. Once older people lose their home, they are less likely than their young counterparts to ever again become homeowners and are more likely to face health problems.

Under the FHA, HUD and other federal agencies have an obligation to further fair housing. 42 U.S.C. § 3608 (d), (e)(5). One way in which HUD fulfills this obligation is by working with those entities that receive its funding to ensure that fair housing is affirmatively furthered at the local level. In this way, the intent of Congress in enacting the entire FHA to "provide, within constitutional limitations, for fair housing throughout the United States," 42 U.S.C. § 3601, and its intent in enacting the affirmatively furthering provisions, § 3608 (d), (e)(5), can be fulfilled. HUD required cities and other required entities to take meaningful and significant actions to affirmatively further fair housing (AFFH). 24 C.F.R. § 5.152. One of those requirements is to determine if discriminatory lending is present, and if so, whether and how the city will take effective action to address it. If a city were to fail to comply with its AFFH obligations, HUD could take compliance actions, ranging from a warning including providing help and technical assistance, to withholding funds.

Where lenders violate the FHA by discriminating against protected classes, cities should have standing to challenge practices that cause foreseeable public consequences and economic harm to the cities. The FHA is not only directed to individual based discrimination, but is intended to focus on the community and neighborhoods. Most importantly, it is intended to provide a remedy for segregation. Subprime and predatory mortgage lending discrimination has a greater effect not only on minority borrowers, but on minority neighborhoods as well.

The chain of events that occurs as the result of predatory subprime lending has been known, studied and described. U.S. Dep't of Treas. & U.S. Dep't of Hous. and Urban Dev., *Joint Report on Recommendations to Curb Predatory Mortgage Lending* (2000), https://www.treasury.gov/press-center/press-releases/Documents/treasrpt.pdf [hereinafter *Joint Report*]. Subprime or predatory mortgage lending leads to an increased risk of foreclosure. Subprime mortgage loans are more likely to be predatory, that is, abusive. Foreclosures lower home values within an area around the foreclosed home. Foreclosed homes are likely to be abandoned. Abandoned homes bring problems that further reduce the property values of nearby homes. Thus, it is entirely foreseeable that engaging in predatory lending practices results in lowering property values, causing economic harm to a city through reduced tax revenue.

ARGUMENT

I. Older People are Disproportionately Harmed by Predatory Lending and its Consequences.

Homeownership is the "source of wealth that should offer the security and prosperity so centrally connected to the narrative of the American Dream." Baher Azmy, *Squaring the Predatory Lending Circle: A Case for States as Laboratories of Experimentation,* 57 F. L. Rev. 295, 345 (2005); *see also* Thomas Shapiro et al., Inst. on Assets and Soc. Pol'y, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide* (2013), http://iasp.brandeis.edu/pdfs/Author/shapiro-thomas-m/racialwealthgapbrief.pdf. It is an especially important source of wealth for the older population, almost 80 percent of whom are homeowners. Mark Mather et al., Population Reference Bureau, *Aging in the United States,* 70 Population Bull. 2 (Dec. 2015), http://www.prb.org/pdf16/aging-us-population-bulletin.pdf. Older Americans often tap their home equity, which is often their most valuable or only asset, to help pay for retirement or unexpected expenses. Lori Trawinski, AARP Pub. Pol'y Inst., *Nightmare on Main Street: Older Americans and the Mortgage Market Crisis* (2012), http://www.aarp.org/content/dam/aarp/research/public_policy_institute/cons_prot/2012/nightmare-on-main-street-AARP-ppi-cons-prot.pdf.

Older people are particularly vulnerable to losing their homes due to predatory lending practices.[2] Lenders frequently target the elderly and low-income minorities because they view them as more vulnerable to predatory practices. Kathleen C. Engel & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 Tex. L. Rev. 1255, 1280-83 (2002). Many older homeowners no longer carry a mortgage and are likely to have significant equity, making them targets for lenders that profit more from larger loans.

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[2] It is the circumstances regarding a loan that typically make it predatory. Kathleen C. Engel & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 Tex. L. Rev. 1255, 1261 (2002). Lending practices become predatory when lenders target a particular population, take advantage of the borrower's inexperience and lack of information, manipulate a borrower into a loan the borrower cannot afford to pay, or with terms that are significantly less advantageous than a loan for which the borrowers are qualified. Deborah Goldstein, J. Ctr. For Hous. Studies at Harv. Univ., *Understanding Predatory Lending: Moving Towards a Common Definition and Workable Solutions*, 7-8 (1999), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/goldstein_w99-11.pdf.

Id. They may seek out lenders or be receptive to offers for home equity loans to pay for home repairs, health care, or to assist other family members. *Id.* In addition, older people, and especially older minorities, are vulnerable to predatory lending because many are likely to live alone and to be home when door-to-door salespeople knock or telemarketers call. *Id.*

Whether or not they are predatory, subprime loans carry higher interest rates, fees, and closing costs than do prime loans. *See id.* at 1261. Subprime loans were aggressively marketed and sold to borrowers, including many older and minority borrowers who qualified for a less expensive, higher quality prime loans, leading up to the housing market collapse that occasioned the Great Recession. *Id.* Subprime lending has a particularly disproportionate impact on older minority borrowers. In a 2011 study, subprime loans made up only 6.8 percent of the overall loan count made to white borrowers 50 years and over, but subprime loans were 21.8 percent of the overall loan count for African-American borrowers 50 and over, and 12.9 percent of the overall loan count for Hispanic borrowers 50 and over. Trawinski*, supra,* at 10-11.[3]

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[3] This reflects the racially unequal distribution of subprime mortgages in the general population, even when the data are controlled for income level and credit rating. *See, e.g.*, U.S. Dep't of Treas. & U.S. Dep't of Hous. and Urban Dev., *Joint Report on Recommendations to Curb Predatory Mortgage Lending* 1 (2000) https://www.treasury.gov/press-center/press-releases/Documents/treasrpt.pdf. African-American and Hispanic homeowners and communities also suffer disproportionately from rates of foreclosure. Aleatra P.

Even modestly inflated prices, charges and fees associated with subprime lending make older homeowners more vulnerable to losing their homes because high housing costs consume a disproportionate share of their more limited income. *See* William C. Apgar & Zhu Xiao Di, J. Ctr. for Hous. Studies of Harv. Univ., *Housing Wealth and Retirement Savings: Enhancing Financial Security for Older Americans* 16 (2005), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w05-8.pdf (the majority of homeowners 50 and over have income that is below median and are more likely to have a fixed income). More than 25 percent of older homeowners spend a large enough proportion of their monthly household income on housing expenses (e.g. mortgage, utilities, taxes) to be considered to have a "housing cost burden," defined as paying more than 30% of gross income. Mather, *supra,* at 6. Such housing cost burdens can negatively affect the health and economic well-being of older Americans. Apgar & Di, *supra,* at 16. The vast majority of older homeowners living at the lower economic margins and still paying a mortgage debt are paying most of their income for housing costs. Kermit Baker, et al., J. Ctr. for Hous. Studies of Harv. Univ., *Housing America's Older Adults: Meeting the Needs of an Aging Population* 3 (2014), http://www.jchs.harvard.

Williams, *Lending Discrimination, the Foreclosure Crisis and the Perpetuation of Racial and Ethnic Disparities in Homeownership in the U.S.*, 6 Wm. & Mary Bus. L. Rev. 601, 629-631 (2015).

edu/sites/jchs.harvard.edu/files/jchs-housing_americas_older_adults_2014.pdf; *see also* Deborah Goldstein, J. Ctr. For Hous. Studies of Harv. Univ., *Understanding Predatory Lending: Moving Towards a Common Definition and Workable Solutions* 7-8 (1999), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/goldstein_w99-11.pdf.

Predatory lending practices rob older people of the equity they built in their homes over many years, eliminating the primary source of wealth upon which they have relied to sustain them through their lifespan. "Predatory lending, therefore, is not only hurting tens of thousands of American families annually, it is also slowly and steadily draining a major source of wealth from poor, minority, and elderly communities in the form of home equity." Azmy, *supra,* at 345. Approximately 1.5 million families that lost their homes to foreclosure between 2007-2011 were headed by a person over age 50. Trawinski, *supra,* at 1. During the same time period, the rate of serious delinquency in making mortgage payments faced by people 50 and over outpaced that of younger homeowners. *Id.* One-quarter of subprime loans of borrowers age 50 and over were seriously delinquent as of December 2011. *Id.* Mortgage delinquency itself is associated with increased incidence of mental health problems for people 50 and over. *Id.* at 5-6. Older homeowners' high rate of delinquencies resulting from subprime mortgages creates further risk of exposure to other types of predatory lending, which in turn again increases their risk of foreclosure. *Id.* at 22. For instance, older homeowners that fall behind on mortgage payments face an increased risk of being targeted by foreclosure rescue scammers. *Id*. Over 40 percent of reported losses from foreclosure rescue scams between 2009 and 2011 were suffered by homeowners 50 and over. *Id*.

Once an older homeowner loses a home to foreclosure, that homeowner is less likely to become a homeowner again than a homeowner of a younger age. Jonathan Spader, J. Ctr. For Hous. Studies of Harv. Univ., *How Much of the Homeownership Rate Decline from 2005-2015 is Due to Foreclosures?* (May 26, 2016), http://housingperspectives.blogspot.com/2016/05/how-much-of-homeownership-rate-decline.html (from 2005 - 2015, the loss of homes to foreclosures was more closely correlated to homeownership rates among older homeowners than to any other age group). Older people who lose their homes to foreclosure lose not only their shelter, but also the wealth, financial stability, and well-being that homeownership affords them. *Id.* at 3. *See also* Baker, at 1. Foreclosure, and even the threat of foreclosure, is associated with significant negative health consequences. Trawinski*, supra,* at 4. Low-income older people may lose their independence and opportunity to live in the community. If they cannot find affordable or accessible housing, their only alternative might be institutionalization, because Medicaid funded nursing home placement might be the only readily available option other than homelessness. Jennifer Goldberg, et. al., Justice in Aging, *How to Prevent and End Homelessness Among*

Older Adults 5 (2016), http://www.justiceinaging.org/wp-content/uploads/2016/04/Homelessness-Older-Adults.pdf.

II. Cities Have an Obligation to Address Discriminatory Lending Under the Fair Housing Act's Affirmatively Furthering Provision

The FHA was enacted "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. In order to accomplish this goal, the FHA in addition to prohibiting discrimination in the broad housing market on the basis of race, color, national origin, sex, religion, familial status, and disability, 42 U.S.C. § 3604 (a), (f), includes an affirmative obligation for HUD and other federal agencies to further fair housing. 42 U.S.C. § 3608 (specifically, subsections (d) and (e)(5)). Section 3608 reflects Congress's desire that "HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases." *N.A.A.C.P. v. Sec'y of Hous. & Urban Dev.*, 817 F.2d 149, 155 (1st Cir. 1987) (observation by then-Judge Stephen Breyer (now Justice Breyer)); *see also*, *Otero v. N.Y. City Hous. Auth.*, 484 F.2d 1122 (2d Cir. 1973) (Section 3608 requires public housing authority admission plan furthers the FHA's goals to take action to further integration and avoid segregation after demolition and redevelopment of low income housing at a specific site); *Shannon v. U.S. Dep't of*

Hous. & Urban Dev., 436 F.2d 809 (3d Cir. 1970) (before HUD could approve a change in the type of housing included in a site-specific redevelopment plan, HUD must be provided with information by the local planning authority sufficient to answer whether fair housing was being furthered).

HUD fulfills its statutory duty under Section 3608, in part, by requiring its funding recipients to affirmatively further fair housing, in addition to requiring them to comply with other civil rights laws through refraining from discrimination. 24 C.F.R. §§ 5.150 - 5.180 (2015). HUD, in stating the purpose of the regulations it promulgated to implement the AFFH obligation, emphasizes the FHA's goals to address the effects of discrimination on communities. HUD declares that the purpose of the AFFH regulations is "to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination." § 5.150. Cities and municipalities are such program participants. Their legal obligation to affirmatively further fair housing under Section 3608 flows from their receipt of housing and development funding from HUD and other federal agencies; the obligation starts at the federal door, but municipalities share in it as they partner with HUD and other federal agencies. *Id.* Through its AFFH regulations, HUD seeks to provide "an effective planning approach," establishing "specific requirements for the development and submission of an Assessment of Fair Housing (AFH) by program participants." *Id.* Neither Congress nor HUD dictate the minutia of how a municipality should further fair housing, which would render the concept of comprehensive planning and community input meaningless. §§ 5.150 - 5.180. Instead, HUD requires the locality to analyze its own ordinances and policies to determine if they create impediments to fair housing and to explain how its priorities and goals are designed to overcome their effects. *See County of Westchester v. U.S. Dep't of Hous. & Urban Dev.*, 802 F.3d 413, 434 (2d Cir. 2015). HUD also requires the municipality to take "significant actions" towards affirmatively furthering fair housing. 24 C.F.R. § 5.152.

The Community Development Block Grant (CDBG) program is HUD's largest and most significant grant program subject to AFFH obligations. *See* 42 U.S.C. §§ 5301–5317 (2006) (creating the CDBG program); *see also* Robert G. Schwemm, *Overcoming Structural Barriers to Integrated Housing: A Back-to-the-Future Reflection on the Fair Housing Act's "Affirmatively Further" Mandate*, 100 Ky. L.J. 125 (2012). It provides annual grants on a formula basis to cities in metropolitan areas with a population of 50,000 or more, principal cities of metropolitan areas, or urban counties with a population of at least 200,000 (excluding the population of metropolitan cities located therein). Off. of Block Grant Assistance, U.S. Dep't of Hous. & Urban Dev., *Basically CDBG* 1-4 (May 2014), https://www.hudexchange.info/resources/documents/Basically-CDBG-Chapter-1-Overview.pdf. In fiscal year 2016 Congress provided $2.1 billion in formula grants to localities. Cmty. Planning and Dev., U.S.

Dep't of Hous. & Urban Dev., *CPD Appropriations Budget*, http://portal.hud.gov/ hudportal/HUD?src=/ program_offices/comm_planning/about/budget (last visited Oct. 5, 2016). As an example, Miami received $18.8 million in CDBG and other HUD funds that are subject to AFFH obligations and planning requirements. Miami Dep't of Cmty. & Econ. Dev., *Consolidated Annual Performance & Evaluation Report* 2 (Fiscal Year 2013 – 2014) http://www. miamigov.com/communitydevelopment/Docs/Reports/ CAPERFINALFY1314.pdf.

A city's failure to address predatory lending in an effective manner as part of its AFFH obligations may lead to compliance actions by HUD. HUD can enforce a city's failure to meet its AFFH obligation using its existing compliance processes under, for instance, the FHA and Title VI of the Civil Rights Act, 42 U.S.C. §§ 2000d-2000d-7, or it can follow procedures specifically set out in relation to certain HUD funded programs. 24 C.F.R. pt. 91 and 903. Compliance actions can include steps from providing technical assistance to withholding of HUD's federal funding from the municipality. *See Westchester,* 802 F.3d at 413 (holding that HUD could under the FHA properly withhold all the county's community planning and development funds, because the county failed to submit a minimally adequate analysis of impediments to fair housing regarding the zoning and land use laws of the jurisdictions within it, after HUD had provided numerous warnings and detailed written expert explanations).

HUD, in its AFFH assessment tool, requires that municipalities identify if lending discrimination is present in their community as a contributing factor to segregation, lack of access to opportunity or disproportionate housing needs. U.S. Dep't of Hous. and Urban Dev., *Affirmatively Furthering Fair Housing Assessment Tool: Announcement of Final Approved Document,* 80 Fed. Reg., 81840, 81851 (Dec. 31, 2015) (Assessment Tool available at: https://www.hudexchange.info/ resources/ documents/ Assessment-of-Fair-Housing-Tool.pdf).[4] This is an issue cities must address because "one of the concomitant, latent effects of inequitable lending is the furtherance of racial segregation." Aleatra P. Williams, *Lending Discrimination, the Foreclosure Crisis and the Perpetuation of Racial and Ethnic Disparities in Homeownership in the U.S.*, 6 Wm. & Mary Bus. L. Rev. 601, 635 (2015). HUD has long required grantees to analyze local home mortgage data for any discrepancies that exist by race and neighborhood. *See* U.S. Dep't of Hous. and Urban Dev., *Fair Housing Planning Guide* §§ 2-9, 3-8, 4-2 (1996), http://www.hud.gov/offices/fheo/images/fhpg.pdf. "Frequently, the terms offered to Blacks or other minority borrowers have been less favorable than those offered to nonminority borrowers." *Id.* § 5-21.

[4] HUD has provided other guidance to cities and grantees to assist them in fulfilling their AFFH obligations. *See, e.g.,* U.S. Dep't of Hous. And Urban Dev., *Affirmatively Furthering Fair Housing Rule Guidebook* (Dec. 31, 2015), https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf, AFFH Data and Mapping Tool, https:// www.hudexchange.info/resource/4867/affh-data-and-mapping-tool/ (tool and user guide provided at bottom of page under "Resource Links").

Moreover, "the less favorable terms have been the only ones available in the neighborhoods in which the minority borrowers reside, or in which the dwellings they plan to purchase are located. These most often have been minority neighborhoods." *Id.* Once such discrepancies were identified, HUD required that steps be taken to address them. For instance, HUD suggested an acceptable action step could be to enter into a negotiated agreement with a bank to refrain from further discrimination and provide other remedies. *Id.* § 4.11. A city might also pursue a strategy of seeking a remedy through litigation against banks that have engaged in discriminatory lending, as Miami is doing in this case. *See, e.g.*, *Mayor of Baltimore v. Wells Fargo Bank, N.A.,* 2011 U.S. Dist. LEXIS 44013 (D. Md. Apr. 22, 2011) (holding that Baltimore's allegations were sufficient to establish standing to enforce the FHA and denied a motion to dismiss).[5]

[5] In settling the case, Wells Fargo agreed to provide $4.5 million in direct down payment assistance to qualifying Baltimore homebuyers and $3 million *to the City* to use for priority housing and foreclosure-related initiatives. In addition, Wells Fargo has committed to making $425 million in prime mortgage loans in Baltimore over the next five years, $125 million of which will be in low and moderate income neighborhoods. *See* Relman, Dane & Colfax P.L.L.C., *Baltimore Settles Landmark Fair Lending Case Against Wells Fargo,* http://www.relmanlaw.com/civil-rights-litigation/cases/Baltimore-v-wells-settlement.php#sthash.ZHx06jPu.dpuf (last visited Oct. 4, 2016).

III. Cities Should Have Standing Under the FHA to Hold Lenders Accountable for the Public Harms and Foreseeable Consequences That Result from their Discriminatory Lending Practices.

A central purpose of the FHA is to address fair housing at the geographic, place-based level. The Supreme Court quoted Sen. Mondale, the FHA's principal sponsor in the Senate, in its first FHA decision as evidence of the FHA's intent, "the reach of the proposed law was to replace the ghettos 'by truly integrated and balanced living patterns.'" *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972) (quoting statement of Sen. Mondale, 114 Cong. Rec. 3422 (1968)). Mondale believed the FHA reflects Congress's commitment "to the principle of living together" and to promoting integrated neighborhoods where residents of different races would live together in "harmony." 114 Cong. Rec. 2276 (1968). According to Senator Javits, the intended beneficiaries of the FHA were not only blacks and other minorities groups, but also "the whole community." 114 Cong. Rec. 9559 at 2706 (1967). Congress included Section 3608 (e)(5), requiring HUD to affirmatively further fair housing, specifically to require that HUD "cure the widespread problem of segregation in public housing." *Clients' Council v. Pierce*, 711 F.2d 1406, 1425 (8th Cir. 1983) ("Rarely does HUD withhold funds or defer action in the name of desegregation" (quoting Senator Brooke, 114 Cong. Rec. 2527-2528)).

Subprime lending practices have been recognized as having a disproportionately adverse effect on minority neighborhoods since at least the 1990's. *See Joint Report*, *supra,* at 47. "[B]orrowers in *upper-income* black neighborhoods were twice as likely as homeowners in *low-income* white neighborhoods to refinance with a subprime loan." *Id.* at 48. Neighborhoods with the highest levels of the riskiest subprime lending had greater African-American or Hispanic populations than other areas of the city. *Id*. at 48. The *Joint Report* specifically identified reverse-redlining[6] as an evolving problem to be addressed further, particularly under the FHA. *Id*. at 72. The *Joint Report* also demonstrated that neighborhoods with a higher-than-average composition of minority residents would face higher rates of foreclosure. *See id*. at 49-51. Finally, the report noted that the harm from having foreclosed and abandoned properties in the community included lowered property values, crime, and instability. *Id*. at 51. Foreclosures also affect public health; one study found that the mere presence of foreclosed homes in a neighborhood is associated with increases in medical visits for physical and mental health conditions. Trawinski*, supra,* at 5. The number of completed

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[6] Reverse redlining is "the practice of extending credit on unfair terms" to communities that have been historically denied access to credit, predominantly on the basis of race. *Hargraves v. Capital City Mortg. Corp*., 140 F. Supp. 2d 7, 20 (D.D.C. 2000). *See also*, Williams, *supra,* at 607.

foreclosures continues to be elevated above pre-financial crisis levels. Spader, *supra*.

The amount by which a foreclosed home reduces the value of a neighboring property ranges from 0.9 percent to 8.8 percent. Off. of Pol'y Dev. and Res., U.S. Dep't of Hous. and Urban Dev., *Vacant and Abandoned Properties: Turning Liabilities into Assets*, Evidence Matters (Winter 2014), https://www.huduser.gov/portal/periodicals/em/winter14/highlight1.html [hereinafter *Vacant*]. If the property is vacant or abandoned, it will have an even greater effect on nearby property values. *Id.* Along with an increase in crime, including assault, vacant properties bring a whole host of other health and safety problems that require expenditures of a locality's resources, whether for demolition or rehabilitation. *Id.* Vacant properties bring rodent infestations and fire and water damage to nearby houses. James J. Kelly, Jr., *Affirmatively Furthering Neighborhood Choice: Vacant Property Strategies and Fair Housing,* 46 U. Mem. L. Rev. 1009, 1027 (2016). These risks can make it difficult for residents in the neighborhood to purchase property insurance, or even obtain a mortgage. *Id.* If a bank owns the property taken by foreclosure, the likelihood of discrimination based on race and national origin continues in regard to the condition in which the property is maintained. *See* Nat'l Fair Hous. All., *Zip Code Inequality: Discrimination by Banks in the Maintenance of Homes in Neighborhoods of Color* (Aug. 27, 2014), http://www.mvfairhousing.com/pdfs/2014-08-27_NFHA_REO_report.PDF (finding that bank-owned properties in neighborhoods of color were about twice as likely as homes in white neighborhoods to have significant amounts of trash and debris on the property, unsecured or broken doors or windows, and holes in the structure, than in white neighborhoods; bank-owned homes in white neighborhoods were more likely to have a professional "for sale" sign).

As the *Joint Report* demonstrated in 2000, predatory lending practices result in a significant increase in the rate of foreclosures in the targeted or affected communities. *See Joint Report*, *supra*. As a direct result of those foreclosures, housing values nearby are reduced. *See Vacant*, *supra*. In addition, predatory lending practices must be addressed by the city to further the goals of integration and affirmatively furthering fair housing. 42 U.S.C. §§ 3601, 3608. Finding that a city, such as Miami, has standing thus furthers Congress' intent that the FHA "provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601.

CONCLUSION

The decision of the Eleventh Circuit should be affirmed.

Respectfully submitted,

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