No. 19-

IN THE
Supreme Court of the United States

WELLS FARGO & CO.
and WELLS FARGO BANK, N.A.,
Petitioners,

v.

CITY OF MIAMI,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether proximate cause in private litigation about the Fair Housing Act requires more than a "logical bond" between the alleged statutory violation and the plaintiff's injury.

PARTIES TO THE PROCEEDING

Wells Fargo & Co. and Wells Fargo Bank, N.A., petitioners on review, were the defendants-appellees below.

The City of Miami, respondent on review, was plaintiff-appellant below.

RULE 29.6 DISCLOSURE STATEMENT

1. Wells Fargo & Co. has no parent corporation, and no publicly held company owns 10% or more of Wells Fargo & Co.'s stock.

2. Wells Fargo Bank, N.A.'s parent corporation is Wells Fargo & Co., and Wells Fargo & Co. is a publicly held company that owns 10% or more of Wells Fargo Bank, N.A.'s stock. With the exception of Wells Fargo & Co., no other publicly held company owns 10% or more of Wells Fargo Bank, N.A.'s stock.

RELATED PROCEEDINGS

U.S. Supreme Court:

Wells Fargo & Co. v. *City of Miami*, No. 15-1112 (U.S. May 1, 2017) (reported at 137 S. Ct. 1296) (consolidated with *Bank of America Corp.* v. *City of Miami*, No. 15-1111) (vacating and remanding for further proceedings)

U.S. Court of Appeals for the Eleventh Circuit:

City of Miami v. *Wells Fargo & Co.*, No. 14-14543 (11th Cir.):

(May 3, 2019) (reported at 923 F.3d 1260) (reversing in part the district court's dismissal of the City's amended complaint and remanding for further proceedings);[*]

(Sept. 1, 2015) (reported at 801 F.3d 1258) (affirming in part and reversing in part the district court's dismissal of the City's amended complaint, and remanding for further proceedings)

U.S. District Court for the Southern District of Florida:

City of Miami v. *Wells Fargo & Co.*, No. 13-24508-CIV (S.D. Fla. July 9, 2014) (unreported) (order granting motion to dismiss)

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[*] In the Eleventh Circuit on remand, the case was decided in a single opinion along with *City of Miami* v. *Bank of America Corp.*, No. 14-14543, but the two appeals were not formally consolidated.

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PETITION FOR A WRIT OF CERTIORARI

Wells Fargo & Co. and Wells Fargo Bank, N.A. (collectively, Wells Fargo) respectfully petition for a writ of certiorari to review the judgment of the Eleventh Circuit in this case.

OPINIONS BELOW

This Court's previous opinion reversing the Eleventh Circuit's judgment and remanding the case after oral argument is reported at 137 S. Ct. 1296. Pet. App. 73a-99a. The Eleventh Circuit's opinion on remand is reported at 923 F.3d 1260. Pet. App. 1a-72a. The district court's original orders granting Wells Fargo's motion to dismiss and denying reconsideration are unreported. *Id.* at 181a-183a, 172a-

173a. The Eleventh Circuit's order denying panel rehearing and rehearing en banc is unreported. *Id.* at 202a-203a.

JURISDICTION

The Eleventh Circuit entered judgment on May 3, 2019. Pet. App. 1a-72a. Wells Fargo timely petitioned for panel rehearing and rehearing en banc, which were denied on August 26, 2019. *Id.* at 202a-203a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Fair Housing Act are reproduced in the appendix to this petition. Pet. App. 204a-218a.

INTRODUCTION

The City of Miami sued Wells Fargo (and three other banks) under the Fair Housing Act (FHA), seeking to recover for diminished property-tax revenues in the wake of the financial crisis and national downturn in the housing market. The City alleged that Wells Fargo offered discriminatory mortgage terms to certain borrowers, which increased the risk the borrowers would default, which could lead to foreclosure, which could depress the values of the foreclosed properties and neighboring properties, and which would affect tax assessments and reduce the City's tax revenues. The district court dismissed for lack of proximate cause, finding the causal chain too attenuated. And when the Eleventh Circuit reversed on the ground that mere foreseeability was sufficient

to satisfy proximate cause, this Court disagreed, remanding for the lower courts to apply traditional common-law directness principles instead. Pet. App. 85a-87a.

On remand, the Eleventh Circuit again held that the City had pled proximate cause, but it did so in a way that countermanded each guidepost this Court provided. This Court explained that "[a] violation of the FHA may * * * be expected to cause ripples of harm to flow *far beyond* the defendant's misconduct," but that "[n]othing in the statute suggests that Congress intended to provide a remedy wherever those ripples travel." *Id.* at 85a (emphasis added) (internal quotation marks omitted). But the Eleventh Circuit turned that holding on its head, concluding that the FHA's proximate cause standard "looks *far beyond* the single most immediate consequence of a violation." *Id.* at 40a (emphasis added). This Court also concluded that the FHA requires "some direct relation between the injury asserted and the injurious conduct alleged." *Id.* at 86a (internal quotation marks omitted). But the Eleventh Circuit held that a plaintiff's injury need not be "caused directly" by the statutory violation; rather, a "logical bond" is enough. *Id.* at 21a-22a (internal quotation marks omitted).

This Court also held that the FHA's proximate-cause requirement is controlled by "directness principles" that "general[ly]" limit damages to the "first step." *Id.* at 86a (internal quotation marks omitted). But the Eleventh Circuit held that "step-counting" was largely beside the point, and that it was "more

important" to assess whether the alleged injury was "fairly attributable" to the asserted misconduct—a standard this Court neither mentioned nor alluded to. *Id.* at 23a, 34a. And although this Court held that a cause of action under the FHA "is analogous to" common-law tort actions and pointed to its precedents applying "directness principles" to comparable statutes, *id.* at 86a (internal quotation marks omitted), the Eleventh Circuit disclaimed the ability to glean any "further lessons" from that body of precedent, *id.* at 69a.

The Eleventh Circuit's defiance of this Court's holdings is troubling enough on its own. But the Eleventh Circuit's decision opens a split with several other circuits. Those other courts have found proximate cause lacking on analogous causal chains. Unlike the Eleventh Circuit here, other circuits have rejected the use of statistics and aggregation to cure a lack of proximate cause. And other circuits take seriously this Court's repeated instructions that proximate cause requires true directness between violation and injury, whereas the Eleventh Circuit parsed this Court's instructions regarding directness into irrelevance.

This case thus presents an issue nearly identical to the one this Court found sufficiently important to grant certiorari the last time. The stakes remain staggeringly high: The City is just one of many municipalities seeking to recover what amounts to billions of dollars based on a loose causal chain that asks financial institutions to indemnify them for tax-revenue declines following a nationwide housing-

market slump. And plaintiffs can now point to the Eleventh Circuit's reasoning to justify lax proximate-cause standards to permit similarly "ambitious" suits under a number of other federal statutes. *Id.* at 2a.

The Court should grant the petition and reverse.

STATEMENT

A. Factual Background

1. The Fair Housing Act—Titles VIII and IX of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73, 81-90—prohibits certain types of housing discrimination. Section 804 makes it unlawful 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." 42 U.S.C. § 3604(b). Section 805 provides that "in residential real estate-related transactions"—which includes the "making or purchasing of loans * * * for purchasing, constructing, improving, repairing, or maintaining a dwelling"—it "shall be unlawful * * * 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." *Id.* § 3605(a)-(b).

Section 813 provides a right of action for "[e]nforcement by private persons." *Id.* § 3613. Under that provision, 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 * * * to obtain appropriate relief with respect to such discriminatory housing practice or breach." *Id.* § 3613(a)(1)(A). The statute allows prevailing plaintiffs to recover damages and injunctive relief as well as their costs of suit. *Id.* § 3613(c).

The FHA also authorizes the Attorney General to intervene in private actions "if the Attorney General certifies that the case is of general public importance." *Id.* § 3613(e). Section 814 also provides for "[e]nforcement by the Attorney General" directly, authorizing him to bring "[p]attern or practice cases" and to bring suits referred by the Department of Housing and Urban Development (HUD). *Id.* § 3614. The Attorney General may seek injunctive and monetary relief, including civil penalties "to vindicate the public interest." *Id.* § 3614(d)(1). The FHA also creates a detailed scheme for administrative enforcement by HUD, *id.* §§ 3610-3612, and by HUD-certified state and local agencies, *id.* § 3610(f).[1]

2. This suit is one of many brought by cities and counties—all represented by one of two teams of the same private counsel—against five national banks in

[1] The City is not certified under § 3610(f). *See Fair Housing Assistance Program (FHAP) Agencies*, HUD, https://bit.ly/2BzT7i5 (last visited Nov. 25, 2019).

the wake of the financial crisis.[2] The municipalities seek to recover for alleged losses they claim they suffered as a result of discriminatory loans that led to home foreclosures. The City, like many of these local governments, seeks to recover for reduced property-tax revenue and increased spending on municipal services that it asserts were caused by the alleged discriminatory loans. Pet. App. 74a-76a.

The City's proposed causal chain runs like this. The City's operative complaint alleges that Wells Fargo made loans to minority borrowers on comparatively worse terms than similarly-situated white borrowers and that the City has a statistical model that could prove it. First Am. Compl. ¶¶ 125-133, No. 1:13-cv-24508 (S.D. Fla. July 21, 2014), ECF No. 50-1 (FAC). The City further alleges that it has a second statistical model that can show that recipients of more-expensive "predatory" mortgages were comparatively more likely to default and enter foreclosure. *Id.* ¶¶ 149-151. The City claims that the borrowers' properties lost value when they entered foreclosure and that surrounding properties lost value as well. *Id.* ¶¶ 158-159. That, in turn, led to lower property-tax assessments and less property-tax revenues. *Id.* ¶¶ 158-163. The City alleges that it could use a third statistical model, called a "Hedonic regression," to quantify what portion of proper-

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[2] One of the other banks the City sued, Bank of America, is filing a petition for a writ of certiorari to review the Eleventh Circuit's decision concurrently with this petition.

ty-value losses were attributable to foreclosures, although the City did not actually perform such a regression. *Id.* ¶¶ 165-168. Last, the City alleges that it had to provide additional municipal services to address problems like vagrancy, crime, and fire hazards that occurred at vacant properties. *Id.* ¶¶ 173-181. The City sought damages, an injunction to prevent Wells Fargo from continuing to engage in its alleged discrimination, and attorneys' fees. Pet. App. 12a-13a.

B. Procedural History

1. The City originally brought this suit in 2013. *Id.* at 76a. The district court initially dismissed the City's complaint. The court held that the City lacked prudential standing under the FHA to bring suit because its "merely economic injuries" were not within the FHA's "zone of interests." *Id.* at 193a-194a.

The district court also concluded that the City had not plausibly pleaded that its injuries were proximately caused by Wells Fargo for two reasons. *First*, "[a]gainst the backdrop of a historic drop in home prices and a global recession, the decisions and actions of third parties, such as loan services, government entities, competing sellers, and uninterested buyers, thwart the City's ability to trace a foreclosure to Defendants' activity." *Id.* at 195a. *Second*, even if the "first step of proximate causation were shown," the City had not plausibly pleaded that the foreclosures could be linked to the City's alleged harms. *Id.* at 195a-196a. The City's asserted "statistical correlation[]" was "insufficient to support a

causation claim," and "the actions of intervening actors such as squatters, vandals or criminals that damaged foreclosed properties" also broke the causal connection between the City's alleged harms and Wells Fargo. *Id.*

The Eleventh Circuit reversed. It held that the City fell within the FHA's zone of interests so that it had prudential standing. *Id.* at 146a-147a. As to proximate cause, it held that "foreseeability" was the "proper standard" under the FHA, and it held that the City had adequately alleged harms that were foreseeable results of Wells Fargo's alleged discrimination. *Id.* at 154a-156a.

2. This Court granted certiorari, heard oral argument, vacated, and remanded. *See id.* at 86a-87a. A majority agreed with the Eleventh Circuit that the City had prudential standing to bring suit. *Id.* at 83a. But the eight-member Court—with Justice Gorsuch not participating—unanimously held that "the Eleventh Circuit [had] erred in holding that foreseeability is sufficient to establish proximate cause under the FHA." *Id.* at 85a; *accord id.* at 96a-97a (Thomas, J., concurring in part and dissenting in part).

The Court explained—citing cases applying proximate-cause principles in contexts ranging from the Lanham Act to the Clayton Act to the Racketeer Influenced and Corrupt Organizations Act (RICO)—that "proximate cause 'generally bars suits for alleged harm that is too remote from the defendant's unlawful conduct,'" and that "foreseeability alone does not ensure the close connection that proximate

cause requires." *Id.* at 85a (quoting *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 133 (2014)). "The housing market is interconnected with economic and social life," and so a "violation of the FHA may, therefore, 'be expected to cause ripples of harm to flow' far beyond the defendant's misconduct." *Id.* (quoting *Associated Gen. Contractors of Cal., Inc.* v. *California State Council of Carpenters* (*AGC*), 459 U.S. 519, 534 (1983)). But "[n]othing in the statute suggests that Congress intended to provide a remedy wherever those ripples travel." *Id.* Instead, "proximate cause under the FHA requires 'some direct relation between the injury asserted and the injurious conduct alleged.'" *Id.* at 86a (quoting *Holmes* v. *Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 268 (1992)).

The Court explained that a set of common "directness principles" apply "to statutes with 'common-law foundations.'" *Id.* (quoting *Anza* v. *Ideal Steel Supply Corp.*, 547 U.S. 451, 457 (2006)). The Court further explained that " '[t]he general tendency' " in these cases * * * 'is not to go beyond the first step'" of causation. *Id.* (quoting *Hemi Grp., LLC* v. *City of New York*, 559 U.S. 1, 10 (2010)). But the Court remanded for the lower courts to "define, in the first instance, the contours of proximate cause under the FHA and decide how that standard applies to the City's claims." *Id.* 86a-87a.

Three Justices agreed "with the Court's conclusions about proximate cause, so far as they go," but would have reversed the Eleventh Circuit outright because "the majority opinion leaves little doubt that neither

Miami nor any similarly situated plaintiff can satisfy the rigorous standard for proximate cause that the Court adopts." *Id.* at 96a-99a (Thomas, J., concurring in part and dissenting in part). The concurrence explained that "Miami's own account of causation shows that the link between the alleged FHA violation and its asserted injuries is exceedingly attenuated." *Id.* at 97a. And "[i]n light of this attenuated chain of causation," the concurrence would have held that "Miami's asserted injuries are too remote from the injurious conduct it has alleged." *Id.* at 98a.

3. On remand, the Eleventh Circuit again held that the City had adequately alleged that its property-tax injuries were proximately caused by Wells Fargo's conduct. As the court of appeals saw it, proximate cause is adequately pled "[i]f there is no discontinuity to call into question whether the alleged misconduct led to the injury." *Id.* at 3a.

The court of appeals concluded that the City's alleged property-tax injury satisfied that standard because the "injury to the City's tax base is uniquely felt in the City treasury" and because "the City is in the best position" to "litigate this peculiar type of aggregative injury to its tax base." *Id.* at 4a. The court of appeals reached the opposite conclusion as to the City's municipal-services injury, explaining that the "complaints fail to explain how these kinds of injuries—increases in police, fire, sanitation, and similar municipal expenses—are anything more than merely foreseeable consequences of" Wells Fargo's alleged discrimination. *Id.*

In finding proximate cause adequately pled for the City's property-tax injury, the Eleventh Circuit focused on this Court's holding that proximate cause requires "some direct relation" between the defendant's actions and the plaintiff's injuries. In the Eleventh Circuit's view, that phrase required only "a 'logical bond' between violation and injury." *Id.* at 21a-22a. Although the court of appeals acknowledged that the City's injuries were more than one step removed from Wells Fargo's lending decisions, it considered "step-counting * * * of limited value." *Id.* at 34a.

The court of appeals instead looked to the FHA's purposes and legislative history, concluding that they suggest a particularly expansive version of proximate cause. *Id.* at 34a-40a. The court rejected analogies to other statutes with common-law roots, holding that they offered no "further lessons" beyond the "some direct relation" requirement. *Id.* at 64a-69a. The court also considered what it called the "factors" that this Court used to explain why a RICO cause of action incorporates a proximate-cause requirement generally to hold that proximate cause was satisfied *in this particular case*. *Id.* at 40a-64a. The court reasoned that the factors as applied to this case showed that the City's property-tax damages could be feasibly apportioned and that the City's suit would not lead to a flood of similar litigation. *Id.*

The Eleventh Circuit ultimately acknowledged that there were intervening steps and third parties in the causal chain between Wells Fargo's lending and the City's tax losses. *Id.* at 29a-34a. But it held those

steps and parties were no bar to finding "'some direct relation' between the City's tax-revenue injuries and the Banks' alleged violations of the FHA." *Id.* at 69a.

The Eleventh Circuit denied rehearing (*id.* at 202a-203a), and this petition followed.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD RESOLVE WHETHER FEDERAL STATUTES THAT INCORPORATE COMMON-LAW PROXIMATE-CAUSE PRINCIPLES REQUIRE DIRECTNESS, A QUESTION THAT HAS SPLIT THE CIRCUITS.

This Court previously held that mere foreseeability is not sufficient to establish proximate cause under a statute, like the FHA, that incorporates common-law proximate-cause principles. Pet. App. 85a-86a. "Proximate cause under the FHA" instead "requires 'some direct relation between the injury asserted and the injurious conduct alleged.'" *Id.* at 86a (quoting *Holmes*, 503 U.S. at 268).

The Eleventh Circuit on remand emphasized the word "some" in the phrase "some direct relation" and concluded that the FHA does *not* require "direct causation" after all. *Id.* at 21a-22a. The Eleventh Circuit's new standard conflicts with how other circuits apply proximate-cause directness principles, especially in cases involving the federal statutes that informed this Court's analysis the last time this case was before it. *Id.* at 85a-86a (explaining directness

principles in the FHA context by invoking decisions in Lanham Act, RICO, and Clayton Act cases).

The split is now arguably even more significant than the one that led this Court to grant certiorari before. Then, the Eleventh Circuit's erroneous foreseeability standard was at least confined to the FHA. Now, however, the Eleventh Circuit has loosened the common-law "some direct relation" proximate-cause requirement that applies to the many federal statutes incorporating a common-law proximate-cause requirement. And the Eleventh Circuit's relaxed approach is irreconcilable with how other circuits have applied the same "some direct relation" requirement in different statutory and factual contexts.

A. Several Circuits Have Held Proximate Cause Lacking In Cases With Analogous Causal Chains.

1. The Third Circuit's decision in *City of Philadelphia* v. *Beretta U.S.A. Corp.*, 277 F.3d 415 (3d Cir. 2002) is contrary to the decision below in most every respect. In *Beretta*, the Third Circuit held that the City of Philadelphia could not recover on state-law negligence claims seeking to recover the costs associated with preventing and responding to criminals' use of handguns from firearm manufacturers. *Id.* at 419, 424-426. The gun manufacturers' acts, the court held, were not the proximate cause of the city's injuries. *Id.* at 424-426.

Like the City here, Philadelphia claimed to have suffered " 'direct' and 'independent' injuries involving

some expenses that an injured resident cannot recover." *Id.* at 424; *compare id.* at 424-426, *with* Pet. App. 33a (characterizing the City's alleged "neighborhood or citywide" tax injuries as "direct" and "immediate"). The Eleventh Circuit accepted that rationale, but the Third Circuit held proximate cause was lacking because the city's damages are "no less derivative" for being distinct. *Compare Beretta*, 277 F.3d at 424-425*, with* Pet. App. 54a-55a, 70a-71a. The Third Circuit explained that articulating a distinct damages theory did not change that people "immediately and directly injured by gun violence—such as gunshot wound victims—are more appropriate plaintiffs than the City * * * whose injuries are more indirect." *Beretta*, 277 F.3d at 425. The same is true here with the City of Miami and the individual borrowers who were directly injured. In the Third Circuit, the City's claims would be dismissed in full.

2. Several circuits have also found proximate cause lacking in lawsuits seeking to recover for healthcare-cost injuries derivative of smokers' medical expenses, recognizing that an intermediate injured party—the smokers—broke the proximate-cause chain. The Ninth Circuit, for instance, denied recovery in *Oregon Laborers-Employers Health & Welfare Trust Fund* v. *Philip Morris Inc.*, 185 F.3d 957, 963 (9th Cir. 1999), where health-and-welfare benefit trust plans sought to recover for payments they made for smokers' medical expenses, alleging a " 'direct' injury based on * * * a 'one-link' causation chain" from the defendant tobacco companies' alleged misconduct to the plans' medical payments.

The Ninth Circuit explained that the plans' claims invariably "rel[ied] on alleged injury to smokers," without which the plans would not have incurred additional expenses. *Id.* The smokers were an omnipresent intermediate link, meaning "there [was] no 'direct' link between the alleged misconduct of defendants and the alleged damage to" the plans, and thus no proximate cause. *Id*.

The Second Circuit also rejected health-and-welfare trusts' claims against tobacco companies, because the trusts' "damages [were] entirely derivative of the harm suffered by plan participants as a result of using tobacco products"; "[b]eing purely contingent on harm to third parties, these injuries [were] indirect." *Laborers Local 17 Health & Benefit Fund* v. *Philip Morris, Inc.*, 191 F.3d 229, 239 (2d Cir. 1999), *as amended* (Aug. 18, 1999). The Third Circuit held in a similar suit that the causal connection was too attenuated to satisfy proximate cause. *Steamfitters Local Union No. 420 Welfare Fund* v. *Philip Morris, Inc.*, 171 F.3d 912, 928 (3d Cir. 1999). And the Sixth Circuit affirmed the dismissal of RICO claims brought by individual health-insurance subscribers who alleged that tobacco companies' actions resulted in higher insurance premiums, explaining that the injuries were "purely contingent" on injuries suffered by intermediary smokers and insurers and thus "clearly indirect." *Perry* v. *Am. Tobacco Co.*, 324 F.3d 845, 848 (6th Cir. 2003) (internal quotation marks omitted).

The City's claims here are analogous to those asserted by the health plans and subscribers in these

suits. An intermediate, more-directly-injured party—whether the borrowers or the smokers—stands between the alleged violation and the ultimate injury. If the Eleventh Circuit had applied the proximate-cause teachings of the Second, Third, Sixth, and Ninth Circuits, it would have found proximate cause lacking.

3. The Second and Fourth Circuits have also found proximate cause lacking in a pair of RICO suits through reasoning at odds with the Eleventh Circuit's opinion here.

The Second Circuit held there was no proximate cause under RICO where the plaintiff New York liquor distributor had an exclusive right to distribute certain brands in the State and alleged that the defendant out-of-state distributor sold liquor to retailers, who then smuggled the liquor into New York to evade the plaintiff's brand monopolies. *Empire Merchants, LLC* v. *Reliable Churchill LLLP*, 902 F.3d 132, 135 (2d Cir. 2018). After explaining the proximate-cause standard in part by reference to this Court's earlier opinion in this case, *id.* at 141, the Second Circuit explained that the New York distributor's injuries were not proximately caused by the out-of-state distributor's sales for three reasons. First, the plaintiff distributor "was harmed by [third parties'] decisions"—namely New York retailers' innocent decisions to purchase less from the plaintiff. *Id.* at 142. Second, "the asserted causal relationship between the alleged" misconduct and the plaintiff's harm was "intricate and uncertain" because it was difficult to ascertain whether and how much more

those retailers would have purchased from the plaintiff absent the smuggling. *Id.* at 142-143. Third, another person (New York State) "was a more direct victim" that could have sued for excise-tax avoidance on liquor illegally imported into the state. *Id.* at 144.

Those three reasons are all present here. First, the City's tax injuries depend on the actions of third parties, like borrowers, loan servicers acting on behalf of the owners of the loans, and uninterested homebuyers. Pet. App. 195a. Second, the relationship between lending and decreased home value is so "intricate and uncertain" as to require two statistical analyses. *See* FAC ¶¶ 149-151, 165-168. And third, both borrowers and the Attorney General are better situated to bring suit for more direct injuries. The Second Circuit's reasoning would thus compel the opposite result in this case.

In another analogous case, the Fourth Circuit held that a property owner's insurance company and its consultants' alleged RICO violations did not cause a subcontractor's injuries when the insurance company reduced the amount paid to the property owner on its insurance claim, thereby reducing payment to the subcontractor. *Slay's Restoration, LLC* v. *Wright Nat'l Flood Ins. Co.*, 884 F.3d 489, 490-491 (4th Cir. 2018). The court explained that the plaintiff "ha[d] not alleged facts showing that its injury was the *direct* result of the defendants' conduct" because the "chain of causation * * * extends significantly beyond 'the first step,' proceeding from the" consultants' alleged fraud through the insurance adjuster to the

insurer to the property owner to the contractor to the plaintiff subcontractor. *Id.* at 494. Even though the plaintiff's loss could be "*expected*" by the defendants, that did not establish proximate cause where there were several intervening steps and actors. *Id.* The same reasoning would cut off proximate cause if applied here given the admitted multiple-step causal chain in this case. *See* Pet. App. 20a-22a, 33a-34a.

B. The Eleventh Circuit's Embrace of Statistical Modeling To Establish Proximate Cause Also Conflicts With Other Circuits.

The Eleventh Circuit's opinion also conflicts with the Third and Ninth Circuits by holding that a regression analysis can establish proximate cause by demonstrating "calculable harm." *Id.* at 47a. The City alleged it could bridge the multiple-step causal chain from Wells Fargo's lending to decreased property values through a pair of regressions: one correlating high-cost loans to foreclosures, and another correlating foreclosures to home-value declines. *See supra* pp. 7-8. The Eleventh Circuit accepted the City's contention, reasoning that "the aggregative nature" of its allegations "helps eliminate any discontinuity between the statutory violation and the injury." Pet. App. 48a-49a.

That holding conflicts with the Third and Ninth Circuits, which have *rejected* "aggregation and statistical modeling" to satisfy proximate cause. *Oregon Laborers*, 185 F.3d at 965 (quoting *Steamfitters*, 171 F.3d at 929). Although statistical modeling can be used to measure damages "once liability is

established," they cannot establish proximate cause in the first place. *Steamfitters*, 171 F.3d at 929-930 (internal quotation marks omitted). Otherwise plaintiffs "tangentially affected" by a statutory violation could maintain an action through artful deployment of statistics. *Id.* at 931 (internal quotation marks omitted).

C. The Eleventh Circuit's Interpretation Of This Court's "Some Direct Relation" Proximate-Cause Formulation Conflicts With Other Circuits.

Finally, this Court has held repeatedly that "proximate cause * * * requires 'some direct relation between the injury asserted and the injurious conduct alleged.'" Pet. App. 86a (quoting *Holmes*, 503 U.S. at 268). Emphasizing the word "some" in that formulation, the Eleventh Circuit held that the standard was "softened" to require only a "meaningful and logical continuity" or "logical bond." *Id.* at 21a-22a (internal quotation marks omitted).

But the Fourth Circuit has emphasized the word "direct" in the phrase, explaining that "the application of that requirement * * * turns on the *directness* of the resultant harm," thereby requiring "a proximity of statutory violation and injury such that the injury is sequentially the direct result." *Slay's Restoration*, 884 F.3d at 493-494 (emphasis in original). Other circuits have also emphasized directness in applying this Court's proximate-cause principles. *See, e.g.*, *Varela* v. *Gonzales*, 773 F.3d 704, 710 (5th Cir. 2014) (per curiam) (noting that proximate cause

turns on whether the alleged "violation led *directly* to the [plaintiff's] injuries" (emphasis in original) (quoting *Anza*, 547 U.S. at 461)); *Oregon Laborers*, 185 F.3d at 963 (proximate cause requires "some *direct relation* between the injury asserted and the injurious conduct alleged" (quoting *Holmes*, 503 U.S. at 268, and emphasis the Ninth Circuit's)).

Even in interpreting the key definition of proximate cause, then, the Eleventh Circuit broke from its sister circuits. For that reason, too, there is a conflict warranting this Court's review.

II. THE ELEVENTH CIRCUIT CONTRADICTED THIS COURT, BOTH IN THIS CASE AND OTHER PROXIMATE-CAUSE PRECEDENTS.

A. The Eleventh Circuit On Remand Flouted This Court's Directions.

In a concise and straightforward section of its opinion, this Court articulated several "directness principles" to guide the court of appeals' proximate-cause analysis on remand. Pet. App. 86a. The Eleventh Circuit's opinion amounts to a lengthy rejection of them.

1. This Court's proximate-cause analysis, set forth in this very case, rested on the principle that the FHA requires "some direct relation between the injury asserted and the injurious conduct alleged." *Id.* (quoting *Holmes*, 503 U.S. at 268). The Eleventh Circuit, by contrast, held that a plaintiff's injury need not be "caused directly" by the statutory viola-

tion. A "logical bond" is enough. *Id.* at 21a-22a (internal quotation marks omitted).

The Eleventh Circuit reached that curious result by rewriting this Court's opinion. Rather than give the Court's opinion its plain import—that proximate cause requires a direct link from conduct to injury—the Eleventh Circuit took the phrase "some direct relation," looked up the words "some" and "relation" in a dictionary, and picked out the broadest synonyms. *See id.* Notably, the Eleventh Circuit chose not to look up the word "direct," which its preferred dictionary defines as "effected without any intruding factor or intervening step." *Webster's Third New International Dictionary* 640 (1993). Through its selective lexical alchemy, the Eleventh Circuit transformed "direct relation" into "palpable causation," and from there into "logical bond." Pet. App. 21a-22a. The result is a proximate-cause test that looks nothing like what this Court commanded the Eleventh Circuit to apply on remand.

This Court also held that the FHA's proximate-cause requirement is controlled by "directness principles" that "general[ly]" limit damages to "the first step." *Id.* at 86a (internal quotation marks omitted). Under that standard, the City's property-tax losses cannot be proximately caused by Wells Fargo's lending activity because there are *multiple* intervening steps. As Justice Thomas, joined by Justices Kennedy and Alito, framed it last time, the City's causal chain involves at least five steps to get from alleged discrimination to property-tax harms: "As a result of the lenders' discriminatory loan practices,"

(1) "borrowers from predominantly minority neighborhoods were likely to default on their home loans," (2) "leading to foreclosures," which (3) "led to vacant houses," which (4) "led to decreased property values for the surrounding homes," which (5) "resulted in homeowners paying lower property taxes to the city government." *Id.* at 97a-98a (Thomas, J., concurring in part and dissenting in part). Even that causal chain may understate the number of steps. The best the City can do is allege that a higher loan payment "can cause the borrower to be unable to make payments on the mortgage." FAC ¶ 147. It does not even attempt to account for other independent causes of default, such as job loss, medical bills, or economic stresses occasioned by the financial crises. Other processes also intervene, such as the decision of a borrower or loan servicer to foreclose rather than renegotiate the mortgage. Even then, any decline in home value depends on the health of the regional housing market. And if a home's market value does decline, its tax-assessed value may nonetheless rise because Florida caps year-over-year increases in assessed value but allows the assessment to reset to market value when ownership changes. *See* Fla. Const. art. VII, § 4(d).

The Eleventh Circuit quibbled with the number of steps involved but acknowledged that the City's property-tax injuries were *at least* "at the second or third step" removed from Wells Fargo's lending activities. Pet. App. 34a. Rather than follow this Court's instructions to stop at the first step, the court of appeals claimed that "step-counting" was largely

beside the point. *Id.* Instead, it was "more important" to assess whether the alleged injury was "fairly attributable" to the asserted misconduct—a standard this Court never even mentioned. *Id.* at 23a; *see id.* at 32a-34a.

2. Because the Eleventh Circuit started with the wrong standard, it inevitably reached the wrong result. This Court explained that because the "housing market is interconnected with economic and social life," a "violation of the FHA may * * * be expected to cause ripples of harm to flow *far beyond* the defendant's misconduct," but "[n]othing in the statute suggests that Congress intended to provide a remedy wherever those ripples travel." *Id.* at 85a (emphasis added) (internal quotation marks omitted). The Eleventh Circuit turned that holding on its head, concluding that the FHA's proximate cause standard "looks *far beyond* the single most immediate consequence of a violation." *Id.* at 40a (emphasis added).

To reach a conclusion so at odds with this Court's directions, the Eleventh Circuit crafted a lax proximate-cause standard peculiar to the FHA. It did so even though this Court held that a cause of action under the FHA "is analogous to" common-law tort actions and pointed to its precedents applying "directness principles" to comparable statutes like RICO, the Clayton Act, and the Lanham Act. *Id.* at 86a (internal quotation marks omitted). The Eleventh Circuit wholly rejected that guidance, however, saying that the FHA "does not have an unmistakable common-law antecedent" and disclaiming the ability

to glean any "further lessons" from the body of precedent this Court cited. *Id.* at 69a.

The Eleventh Circuit's reasoning was unpersuasive on its own terms, anyway. The court observed that "[t]he language of the [FHA] is broad and inclusive." *Id.* at 35a (quoting *Trafficante* v. *Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972)). But the cases it cited all had to do with prudential standing under the FHA. They were, in fact, the same cases this Court cited when it found that the City's claims fell within the FHA's zone of interests. *Id.* at 78a-83a. But those cases were not informative when this Court went on to hold that the FHA had a tighter proximate-cause requirement. *Id.* at 83a-86a.

The Eleventh Circuit also invoked the FHA's broad "remedial aims" to justify its bespoke proximate-cause standard. *Id.* at 37a-40a. But statutes like RICO and the Clayton Act have similarly broad remedial aims and nonetheless require directness to establish proximate cause. *See Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 497-498 (1985) (RICO is to be "read broadly" and "liberally construed" (internal quotation marks omitted)); *Am. Soc'y of Mech. Eng'rs, Inc.* v. *Hydrolevel Corp.*, 456 U.S. 556, 568-569 & n.6 (1982) (antitrust laws were intended to be "given broad, remedial effect").

Last, the Eleventh Circuit reached for legislative history to evade common-law directness principles. Pet. App. 38a-40a. None of that history speaks directly to proximate cause, however. And when that same history was presented to this Court to justify the Eleventh Circuit's foreseeability test, *e.g.*, Brief

for the United States as Amicus Curiae Supporting Respondent 2, 16-17, *Bank of Am. Corp.* v. *City of Miami*, 137 S. Ct. 1296 (Nos. 15-1111, 15-1112), 2016 WL 5903233, this Court declined to adopt it. Moreover, this Court has previously explained that the "legislative history of the [FHA] is not too helpful" in deciding the scope of prudential standing, *Trafficante*, 409 U.S. at 210, much less proximate cause. What governs instead is the text of the statute and the presumption that Congress "'does not mean to displace'" proximate cause "'*sub silentio*' in federal causes of action." Pet. App. 84a (quoting *Lexmark*, 572 U.S. at 132). The FHA "is no exception," *id.*, yet the Eleventh Circuit thought that it was, *id.* at 34a-40a. The Eleventh Circuit's deviations from this Court's prior opinion are reason enough to grant review again.

B. The Eleventh Circuit Violated This Court's Holdings In Other Proximate-Cause Cases.

1. The centerpiece of the Eleventh Circuit's opinion was its (mis)use of this Court's opinion in *Holmes*. In *Holmes*, the Court held that RICO's text incorporated a common-law proximate-cause directness requirement. 503 U.S. at 265-268. *After* reaching that conclusion, the Court gave three reasons why directness is part of proximate cause. *Id.* at 269. "First, the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors." *Id.* Second, "recognizing claims of the indirectly injured would force courts to adopt complicated rules apportioning

damages among plaintiffs removed at different levels of injury from the violative acts, to obviate the risk of multiple recoveries." *Id.* And third, "the need to grapple with these problems is simply unjustified * * * since directly injured victims can generally be counted on to vindicate the law * * * without any of the problems attendant upon suits by plaintiffs injured more remotely." *Id.* at 269-270.

The Eleventh Circuit took those "reasons" for why proximate cause works the way it does, *id.* at 269, and transformed them into "factors" that could be used in specific cases to weaken the proximate-cause requirement, Pet. App. 43a. Nothing in *Holmes*, nor in this Court's prior opinion in this case, suggests that *Holmes*' discussion of proximate cause can be transformed into a multi-factor balancing test for proximate cause in particular cases or as applied to particular statutes. If it could, proximate cause would be vitiated because plaintiffs could always argue that the Eleventh Circuit's balancing test excuses a lack of directness in their specific case.

Indeed, this Court recently rejected an analogous argument in *Apple Inc.* v. *Pepper*, 139 S. Ct. 1514 (2019). In that antitrust case, the defendant argued that the Court should ignore that the plaintiffs were "direct purchasers from the alleged monopolist," because the three "rationales" underlying the direct-purchaser rule were not necessarily satisfied in that particular case. *Id.* at 1524. The Court rebuffed that contention, reiterating that the "bright-line" of the direct-purchaser rule meant "there is no reason to ask whether the rationales of [the rule] 'apply with

equal force' in every individual case." *Id*. at 1524 (citation omitted). Yet the Eleventh Circuit did just the opposite here, inviting litigants to "engage in 'an unwarranted and counterproductive exercise to litigate a series of exceptions' " to proximate cause's directness requirement in every case. *Id.* (citation omitted).

2. The Eleventh Circuit's application of the *Holmes* "factors" proves how easily its interpretation of *Holmes* can nullify proximate-cause directness principles. It found that the first "factor"—that "the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation," *Holmes*, 503 U.S. at 269—favored permitting the City to proceed because the City proffered statistical models to "isolat[e] the role of the Banks' alleged violations" on "reduced tax revenue." Pet. App. 44a. That holding effectively says that any plaintiff with a paid statistician can overcome proximate cause in the Eleventh Circuit, at least at the pleading stage. Not only does that transform proximate cause into a check-the-box exercise, it contradicts this Court's instruction that "massive and complex damages litigation" was a reason not to "entertain[ ] suits to recover damages for any foreseeable result of an FHA violation." *Id.* at 85a-86a (quoting *AGC*, 459 U.S. at 545).

As to the second *Holmes* "factor"—the concern with "complicated rules apportioning damages among plaintiffs removed at different levels of injury," 503 U.S. at 269—the Eleventh Circuit said there was no problem here because "the injuries to the City's

treasury are not shared by any other possible plaintiff." Pet. App. 53a-54a (emphasis omitted). But the City is no different from any other indirectly injured party who suffers from the "ripples of harm" that "flow far beyond the defendant's misconduct." *Id.* at 85a (internal quotation marks omitted). The real-estate agents whose commissions are decreased because of lower home values or creditors unable to collect from homeowners in default also have injuries that are not "shared," in the sense that nobody else suffers in precisely the same way. But that does not relieve them of the ordinary proximate-cause burden.

Moreover, there *is* a substantial risk of double-recovery in this case. The Attorney General already brought suit against Wells Fargo, challenging the same lending practices as the City, and recovered a substantial settlement to compensate "aggrieved persons nationwide." Consent Order at 13 ¶ 17, *United States* v. *Wells Fargo Bank, N.A.*, No. 1:12-cv-01150-JDB (D.D.C. Sept. 21, 2012).

As to the third *Holmes* "factor"—that "directly injured victims can generally be counted on to vindicate the law * * * without any of the problems attendant upon suits by plaintiffs injured more remotely," 503 U.S. at 269-270—the Eleventh Circuit acknowledged that homeowners who were actually discriminated against *could* bring suit. Pet App. 58a-60a; *see also id.* at 54a-55a. But it found the City a better plaintiff because it was more "sophisticated" and its "larger injury" would "achieve better deterrence." *Id*. at 58a-60a. Not only did the Eleventh Circuit lack the authority to excuse the proxi-

mate-cause requirement for "sophisticated" plaintiffs, its reasoning contradicts this Court's previous opinion. This Court was concerned that a weak proximate-cause standard could lead to "massive * * * damages," *id.* at 85a-86a (internal quotation marks omitted), but the Eleventh Circuit saw the potential for significant damages as a reason to relax the proximate-cause standard for the City's claims. Moreover, Congress has already decided how to encourage FHA enforcement: through HUD and state-agency administrative actions, enforcement by the Attorney General, and by compensating prevailing plaintiffs with fee-shifting. *See supra* pp. 5-6. Relaxing the proximate-cause requirement for private plaintiffs—and the City is suing under the same cause of action as any private FHA plaintiff, *see* FAC at 54—was not one of the tools Congress chose.

Holmes itself proves that this case does not create the multi-factor proximate-cause balancing test the Eleventh Circuit read into it. In *Holmes*, the plaintiff suffered losses because it insured broker-dealers who became insolvent when they fell prey to a fraud. 503 U.S. at 262-263. The plaintiff-insurer sought to recover directly against the fraudsters, but this Court held that "the link [was] too remote" because the plaintiff's harm was "purely contingent on the harm suffered by the broker-dealers." *Id.* at 271. This Court did not suggest that the ability of the plaintiff to quantify its losses or its relative sophistication compared to other potential plaintiffs could alter that conclusion. It simply applied the "general tendency of the law * * * not to go beyond the first

step." *Id.* (internal quotation marks omitted). The Eleventh Circuit should have done the same.

3. Even though this Court reiterated that first-step principle when it remanded the case, the Eleventh Circuit said that was not "a hard and fast rule" and that "an intervening step does not necessarily mean proximate cause has not been plausibly alleged." Pet. App. 23a. The court of appeals principally relied on *Lexmark* for its deviation. *Id.* But *Lexmark* does not apply here.

In *Lexmark*, the defendant made laser printers, and the plaintiff manufactured a microchip used to refurbish cartridges for those printers. 572 U.S. at 120-123. The plaintiff alleged that the defendant-printer-maker violated the Lanham Act by falsely telling its customers it was illegal for them to use refurbished printer cartridges, thereby depriving the plaintiff of business when the customers did not use refurbished cartridges made using the plaintiff's microchips. *Id.* at 122-123. This Court held that proximate cause was satisfied for two reasons. First, the Court held that because the Lanham Act does not allow suit by deceived consumers—the most-directly harmed parties—Congress intended to expand the first step to include competitors because otherwise no party could bring suit. *Id.* at 133. Second, the Court held that in the "relatively unique circumstances" of the case, *id.* at 140, proximate cause could extend to the *second* step—that is, allowing the plaintiff to recover for lost chip sales even though the printer-cartridge refurbishers were more-directly harmed. The Court explained that the

plaintiff's microchips "were necessary for" refurbishing the cartridges and "had no other use." *Id.* at 139. There was therefore "something very close to a *1:1 relationship* between the number of refurbished * * * cartridges sold * * * and the number of * * * microchips sold," such that the plaintiff's losses would "follow more or less *automatically*" from the defendant's Lanham Act violation. *Id.* at 139-140 (emphases added).

The contrasts between *Lexmark* and this case are stark. Unlike in *Lexmark*, the most directly harmed parties here (the borrowers) *can* sue under the FHA, and the Attorney General *has* sued. *See supra* p. 29. And unlike in *Lexmark*, the City is not seeking to recover for a second-step injury, but for an injury with multiple intervening steps. Even at that remote remove, the City's property-tax injuries hardly have a "1:1 relationship" with Wells Fargo's alleged FHA violations, and its injuries did not follow "automatically" from those claimed violations. The City does not allege—and cannot allege—that all or even most of the supposedly high-cost loans led to foreclosure or that every foreclosure led to decreased property tax revenues. *See supra* pp. 7-8. At best, then, the City has alleged that, probabilistically, some fraction of the allegedly discriminatory loans will be associated with some diminished home value and then some diminished property-tax revenue—something much more like a 1:100 relationship than a 1:1 relationship.

The Eleventh Circuit acknowledged as much, conceding that it could not assume that "each individual

act" by Wells Fargo "bear[s] a one-to-one proportional relationship to Miami's loss of tax revenue." Pet. App. 48a-49a. That should have ended the analysis, but the Eleventh Circuit instead held that "the aggregative nature of the City's claims" could "eliminate any discontinuity between the statutory violation and the injury." *Id.* That gets proximate cause and *Lexmark* all wrong. An "aggregative" injury does not support proximate-cause; it dooms it. It acknowledges that no particular statutory violation can be traced to any particular injury, but instead that the violation has a fractional and probabilistic connection to the injury.

The Eleventh Circuit also relied on this Court's opinion in *Bridge* v. *Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008), to reject "step-counting." In *Bridge*, the Court considered a claim that the defendant violated RICO by making fraudulent submissions to a county's property auction. The county was the party most directly affected by the fraud because it received and relied on the submissions, but the county could not sue because it was not injured by its reliance. *See id.* at 657-658. If only direct recipients of the misrepresentations could sue for the RICO violation, then *no one* could have sued for the defendant's statutory violation. *Id.* The Court therefore held that competing bidders at auction could satisfy the proximate-cause requirement, and it explained that their injury was the "direct result" of the fraud because—among other things—there were "no independent factors that account for respondent's injury." *Id*. at 658. Thus in

Bridge, both of *Lexmark*'s criteria apply—for expanding the first step and allowing recovery at the second step—making it distinct from this case twice-over. The most-directly-harmed parties here can sue, and there are multiple "independent factors that account for [the City's] injury." *Id.*

4. The Eleventh Circuit's opinion is also inconsistent with the other cases from this Court that it cited. *See* Pet. App. 85a-86a (citing, among others, *Anza*, *Hemi*, and *AGC*). In *Anza*, for instance, the Court held that a defendant-business's failure to pay sales tax did not proximately cause the plaintiff-competitor's loss of sales because the plaintiff's harm resulted not from the tax violation but from the defendant's decision to use the proceeds from the tax fraud to undercut the plaintiff's prices. 547 U.S. at 458-459. That the plaintiff's injuries depended on that "entirely distinct" action—an action of the defendant itself—meant that the claimed RICO violation was impermissibly "attenuat[ed]" from "the plaintiff's harms." *Id.* That is directly analogous to the multiple intervening factors that cut off the chain of causation in this case—such as the loan servicer choosing to foreclose, even when the loan servicer was Wells Fargo itself.

The Eleventh Circuit's opinion is also contrary to this Court's teaching that an alleged injury will fall outside the first step if the harm depends on "separate actions carried out by separate *parties*." *Hemi*, 559 U.S. at 11. In *Hemi*, the Court held that a city could not recover for lost tax revenue where the city's theory would have required the Court to "extend

RICO liability to situations where the defendant's fraud on [a] third party (the State) has made it easier for a *fourth* party (the taxpayer) to cause harm to the plaintiff (the City)." *Id*. And that describes the City's claims here. The City alleges that Wells Fargo's supposed wrongdoing directed at a third party (the borrower) has made it more likely that a fourth party (the loan's owner and its servicer) would foreclose, thereby—through another couple steps—possibly causing harm to the City. The Eleventh Circuit's decision, in short, aligns with *none* of the proximate-cause cases this Court drew on in its previous opinion.

C. The Eleventh Circuit's Proximate-Cause Standard Creates Open-Ended Liability.

The Eleventh Circuit's opinion also imposes few limits on defendants' FHA liability. This Court held that "[n]othing in the [FHA] suggests that Congress intended to provide a remedy wherever * * * ripples [of harm] travel." Pet. App. 85a. And the Court has elsewhere explained that proximate cause means that although the directly harmed party "will be able to sue for its losses, the same is not true of [its] landlord, its electric company, and other commercial parties who suffer merely as a result of [its] 'inability to meet [its] financial obligations.'" *Lexmark*, 572 U.S. at 134 (quoting *Anza*, 547 U.S. at 458).

But the Eleventh Circuit's analysis knows no such limitations. Realtors who lose commissions as a result of lower home values and electric utilities who cannot collect from homeowners in foreclosure can allege the same "aggregative" injuries as the City

based on the exact same type of statistical analyses. The Eleventh Circuit's proximate-cause standard also does not exclude "the injuries suffered by the neighboring homeowners whose houses declined in value," even though "[n]o one suggests that those homeowners could sue under the FHA." Pet. App. 98a (Thomas, J., concurring in part and dissenting in part). Indeed, those neighbors' losses are one of the steps in the City's causal chain here. The neighbors' declines in their property values contribute to the City's alleged lost property-tax revenue. *See* FAC ¶¶ 158-159.

At best, the Eleventh Circuit's proximate-cause standard is a foreseeability test with a couple formulaic pleading rules. At worst, it is an even more relaxed standard than the foreseeability test this Court rejected. If a plaintiff can string together enough statistical models, the Eleventh Circuit's test arguably allows a plaintiff to impose liability even beyond what a defendant bank could foresee.

III. THIS CASE IS AN IDEAL VEHICLE FOR DECIDING AN IMPORTANT ISSUE WITH RAMIFICATIONS THAT EXTEND FAR BEYOND THE FAIR HOUSING ACT.

1. The question presented is exceptionally important given the number of similar cases and massive dollar amounts at stake. The City's suit is one among many brought by outside plaintiffs' lawyers representing some of the largest taxing jurisdictions in the country, including Miami; Fulton County, Georgia (Atlanta); Cook County, Illinois (Chicago);

Philadelphia; and Oakland. At the time of Wells Fargo's previous petition for certiorari, twelve local governments had brought suits similar to the City's, and most of those governments had sued multiple lenders. *See* Pet. for Cert. 3-4 & n.1, *Bank of Am. Corp.* v. *City of Miami*, 137 S. Ct. 1296 (No. 15-1111). The number of suits has only grown since then.

These suits often seek massive damages—in at least one case, the plaintiffs claimed "hundreds of millions of dollars" from a single lender. First Am. Compl. ¶ 421, *Cobb County* v. *Bank of Am. Corp.*, No. 1:15-cv-04081-LMM (N.D. Ga. June 17, 2016), ECF No. 32. The sheer number of pending cases like the City's, and the massive overall damages at stake, weigh at least as strongly in favor of certiorari as the last time this question came before this Court.

2. The practical effects of the Eleventh Circuit's decision could be staggering. By its logic, any plaintiff who has suffered aggregate harms as a result of a real-estate downturn, and who can identify a supposed FHA violation, can seek to recover from lenders for whatever share of financial losses they can conjure a statistical model to say is related to foreclosures. The various FHA complaints filed by cities and counties across the country are largely copies of each other, which suggests no limit to the number of possible plaintiffs with identical claims. And if extended to other statutes like the Clayton Act or RICO, distant plaintiffs can piggyback on almost any lawsuit grounded in a federal statute to amplify the damages.

3. Finally, this case presents an ideal vehicle. The proximate-cause issue is cleanly presented, and a decision on that issue will be dispositive. This Court has already accepted the question of the FHA's proximate-cause requirement in this very case. It declined to decide whether Wells Fargo's alleged acts proximately caused the City's financial injuries because it wished to have the benefit of the Eleventh Circuit's judgment, in the first instance, on how directness principles apply to the FHA. The Eleventh Circuit has since weighed in. Its opinion flouts this Court's guidance and threatens to cause confusion in the lower courts. Granting certiorari (and reversing) is common in cases like this one, in which a lower court on remand attempts to rehabilitate its original outcome despite clear guidance from the Court suggesting a different result. *See, e.g.*, *Flowers* v. *Mississippi*, 139 S. Ct. 2228, 2237-38 (2019); *Moore* v. *Texas*, 139 S. Ct. 666, 672 (2019) (per curiam). There is no value in waiting; the Eleventh Circuit's view of proximate cause stands alone among its sister circuits. The Court should therefore take this opportunity to clarify the reach of proximate cause as incorporated into the FHA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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NOVEMBER 2019