No. 20-405

In The Supreme Court of the United States

CITY OF MIAMI GARDENS, FLORIDA,
Petitioner,

v.

WELLS FARGO & CO.,
Respondent.

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

MOTION FOR LEAVE TO FILE AND *AMICUS CURIAE* BRIEF FOR THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF FOR THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER

Pursuant to this Court's Rule 37, the International Municipal Lawyers Association ("IMLA") respectfully moves for leave of the Court to file the attached brief as *amicus curiae* in support of Petitioner.

All parties have consented to filing this brief; however, IMLA's notice to counsel of record for Respondent of its intent to file this brief was made within 10 days of the brief's due date contrary to this Court's Rule 37(2)(a).

As all parties have nevertheless consented to the filing of this brief, IMLA respectfully requests that this Court grant this Motion for Leave to File the attached *amicus curiae* brief in support of Petitioner.

Respectfully Submitted,

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INTERESTS OF AMICI CURIAE[1]

The International Municipal Lawyers Association ("IMLA") is a non-profit, nonpartisan professional organization consisting of more than 2,500 members. The membership is comprised of local government entities, including cities, counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters.

Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, the United States Courts of Appeals, and in state supreme and appellate courts.

IMLA has a significant interest in promoting the rights of local governments through clarification of procedural rules affecting municipal litigants. *Sua sponte* dismissal prior to discovery obscures the truth-

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[1] Pursuant to Sup. Ct. R. 37.6, amicus curiae state that no counsel for a party has written this brief in whole or in part, and that no person or entity, other than amicus curiae, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. Written consent to the filing of this brief has been obtained from counsel for Petitioners and Respondent.

seeking function of federal courts and inhibits local governments' access to justice on behalf of themselves and their communities.

SUMMARY OF THE ARGUMENT

This case presents an ideal vehicle to rectify the Eleventh Circuit's continued refusal to follow this Court's directive regarding *sua sponte* dismissal and procedural fairness set forth in *Alabama Legislative Black Caucus,* which has resulted in a split in the circuits. Not only is clarity in the law important in the area of procedural fairness, but the underlying issue in this case, which the Eleventh Circuit seeks to avoid adjudicating, implicates critical issues for local governments, including issues of race discrimination in housing and the resulting damage to communities and local governments' very ability to bring affirmative litigation.

Local governments have a fundamental right to seek redress for harms to their communities in federal courts. This type of affirmative litigation is essential to safeguarding the social and financial wellbeing of local governments. Unpredictable *sua sponte* dismissal of municipal claims without the ability to conduct discovery deprives local government and their citizens of their right to seek recourse for widespread harms from predatory lending. More broadly, the Eleventh Circuit's practice threatens local governments' abilities to bring affirmative litigation in a host of other critically important cases. IMLA respectfully requests that this Court grant Petitioner's request for Certiorari, and reverse the decision of the

United States Court of Appeals for the Eleventh Circuit.

ARGUMENT

I. LOCAL GOVERNMENTS SEEKING REDRESS FOR HARMS TO THE COMMUNITY DEPEND UPON CLEAR AND PREDICTABLE STANDARDS FOR SUA SPONTE DISMISSAL

The Eleventh Circuit ignored *Alabama Legislative Black Caucus v. Alabama* by *sua sponte* dismissing this case without adequate discovery, preventing the City of Miami Gardens from seeking redress for harms it suffered. This case presents an important issue involving the conflict between a federal court's discretionary power and the due process protections guaranteed to local governments as aggrieved parties. The petition for certiorari should be granted to bring the Eleventh Circuit in line with the rest of the circuits and allow this Court to clarify the proper application for *sua sponte* dismissal set forth in *Alabama Legislative Black Caucus*. Clarification on this standard is particularly vital to local governments which frequently litigate ongoing violations of the Fair Housing Act as well as other areas of affirmative litigation. In these cases, where litigants depend on discovery to robustly articulate standing, parties depend on clear and unambiguous standards to safeguard themselves from *sua sponte* dismissal as they seek to vindicate the rights of communities at large through affirmative litigation.

a. CLARIFICATION OF THE *ALABAMA LEGISLATIVE BLACK CAUCUS* RULE IS VITAL TO ADVANCING CIVIL RIGHTS CLAIMS AND EFFECTUATING RACIAL JUSTICE

The Fair Housing Act (FHA) forbids "discriminat[ing] 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." 42 U.S.C. § 3604(b). The FHA also makes it unlawful for a business engaging in real estate related transactions to "discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race." 42 U.S.C. § 3605(a). The City's complaint alleges that Wells Fargo Bank did exactly what the FHA prohibits: it steered Black and Hispanic borrowers into higher-cost loans than similarly-situated White borrowers. Petition for Writ of Certiorari at 5, *City of Miami Gardens v. Wells Fargo & Co.*

While individuals can recover for their particular injuries under the FHA, local governments maintain a unique interest in addressing the lasting effects of predatory lending on communities as a whole. For this reason, local governments have a cause of action when their communities are injured by the predatory practices of financial institutions. *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1303, 197 L. Ed. 2d 678, 687 (2017). Lending institutions' impact on communities is pervasive; through steering, lenders

can increase foreclosure rates which in turn can alter the demographic composition of a constituency. *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 114 (1979); Sarah D. Wolff, *The State of Lending in America & its Impact on U.S. Households*, Center for Responsible Lending (June 2015) https://www.responsiblelending.org/state-of-lending/reports/13-Cumulative-Impact.pdf.

As predatory lending manipulates communities, it creates a cycle of devastation. According to the United States Department of Housing and Urban Development, low-income borrowers living in predominantly African American neighborhoods are twice as likely as low-income borrowers in predominantly White neighborhoods to have subprime loans. Nikitra S. Bailey, *Predatory Lending: The New Face of Economic Injustice*, A.B.A Human Rights Mag., Summer 2005.

Not only do the effects of subprime lending disproportionally affect primarily African American and Hispanic communities, the country as a whole lost approximately $845 million dollars in property taxes. J. Economic Committee, 111th Cong., The 2008 Joint Economic Report 91. Local government budgets were strained as an increase in empty buildings resulted in an increased demand for police protection and victims of predatory lending turned to cities for relief programs. Kathleen C. Engel, *Do Cities Have Standing? Redressing the Externalities of Predatory Lending*, 38 Conn. L. Rev. 355, 361-62 (2006). As local governments continued to lose tax revenue and spend extra on social relief, education systems and

neighborhood appearance declined. These effects impaired local governments' abilities to cultivate stable and integrated neighborhoods, further disproportionately harming minority communities.

The underlying issues in this case are of vital importance for local governments to seek redress for the significant harms caused by discriminatory lending. This Court should intervene and grant certiorari to prevent the Eleventh Circuit from continuing to flout this Court's clear directive in *Alabama Legislative Black Caucus* and to ensure local governments can continue to pursue discriminatory lending practice claims.

b. CLARIFYING THE *ALABAMA LEGISLATIVE BLACK CAUCUS* RULE PROTECTS LOCAL GOVERNMENTS' ABILITY TO ENGAGE IN AFFIRMATIVE LITIGATION IN A NUMBER OF CONTEXTS INVOLVING COMPLEX CAUSATION

Affirmative litigation is the proper remedy for the harms experienced by Miami Gardens. In a similar case, *Bank of Am. Corp. v. City of Miami*, the City of Miami brought suit against banks whose discriminatory lending practices resulted in tangible financial losses for the city. *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 197 L.Ed.2d 678 (2017). This Court acknowledged that Miami had standing under the statute, writing "[w]e hold that the City's claimed injuries fall within the zone of interests that

the FHA arguably protects. Hence, the City is an 'aggrieved person' able to bring suit under the statute." *Bank of Am. Corp. v. City of Miami,* 137 S. Ct. 1296, 197 L.Ed.2d 678, 685 (2017).

The injuries-in-fact sustained by the City of Miami Gardens are quite similar to those sustained by the City of Miami in *Bank of Am. Corp. v. City of Miami.* 137 S. Ct. 1296, 1301, 197 L. Ed. 2d 678 (2017). As noted in the petition, the similarity in these cases and this Court's treatment of the standing issue likely explains why the parties in this case did not see the need to address standing. *Sua sponte* dismissal deprives the city of its chance to obtain a remedy for the injury it has sustained. Self-preservation requires that local governments be allowed to recoup the financial losses experienced at the hands of financial institutions.

The FHA is not the only area in which local governments are affirmatively litigating cases and the Eleventh Circuit's decision in this case could have ripple effects on a host of other litigation that local governments are engaged in. For example, over 1,300 local governments have sued opioid manufacturers and distributors, among others, as a result of damages communities have faced from the flood of opioids into their communities. *See City of N. Royalton v. McKesson Corp. (In re Nat'l Prescription Opiate Litig.),* No. 19-4097/4099, 2020 U.S. App. LEXIS 30514, at *3 (6th Cir. Sep. 24, 2020) (detailing allegations made by local governments in multi-district opiate litigation). Local governments around the country are also engaged in affirmative litigation

against oil and gas companies for their contributions to climate change that they allege have caused significant monetary damage to communities around the country. *See, e.g.*, *Mayor of Balt. v. BP P.L.C.*, 952 F.3d 452, 457 (4th Cir. 2020) (certiorari granted); *Cty. of San Mateo v. Chevron Corp.*, 960 F.3d 586, 593 (9th Cir. 2020); *Rhode Island v. Chevron Corp.*, 393 F. Supp. 3d 142, 146 (D.R.I. 2019). Additionally, thousands of local governments have sued Monsanto, claiming it is responsible for environmental contamination from polychlorinated biphenyls, or PCBs. *City of Portland v. Monsanto Co.*, No. 3:16-cv-01418-PK, 2017 U.S. Dist. LEXIS 156370, at *6 (D. Or. Sep. 22, 2017); *see also* Monica Samoya, *Portland, Port Join Settlement With Monsanto Over PCBs Contamination,* OREGON PUBLIC BROADCASTING (June 24, 2020), available at: https://www.opb.org/news/article/portland-port-join-settlement-with-monsanto-over-pcbs-contamination/.

While these cases all present different issues and are brought under a variety of legal theories, a common theme is that they involve complex issues that require discovery, which is often in the hands of the defendants. Should the Eleventh Circuit's rule be allowed to stand, local governments' ability to bring affirmative litigation is at risk.

Because this case has serious implications for local governments' ability to bring affirmative litigation in complex areas of the law, IMLA urges this Court to grant certiorari.

II. GRANTING CERTIORARI WILL CLARIFY EVIDENTIARY REQUIREMENTS FOR STANDING AND RESOLVE A CONFLICT IN THE CIRCUIT COURTS

Although the Supreme Court has thus far avoided placing direct limitations on appellate courts' ability to take action *sua sponte*, the Eleventh Circuit's actions prove that direction is needed in order to uphold basic procedural fairness and due process, as protected by the Fifth and Fourteenth Amendments. When a court dismisses a case *sua sponte* it eliminates a party's ability to be heard. Adam A. Milani & Michael R. Smith, *Playing God: A Critical Look at Sua Sponte Decisions by Appellate Courts*, 69 Ten. L. Rev. 245, 262-65 (2002). Historically, multiple circuits have held that *sua sponte* dismissal is appropriate only when it is indisputable that a plaintiff could not prevail or that the complaint is clearly meritless.[2] However, since its publication, there has been varying interpretation of this Court's holding in *Alabama Legislative Black Caucus v. Alabama.*

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[2] *Gonazalez-Gonzalez v. United States*, 257 F.3d 31, 36-17 (1st Cir. 2001) ("if it is crystal clear that the plaintiff cannot prevail and that amending the complaint would be futile, then a *sua sponte* dismissal may stand."); *Curley v. Perry*, 246 F.3d 1278, 1281-82 (10th Cir. 2001) ("Dismissal . . . without affording the plaintiff notice or an opportunity to amend is proper only 'when it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile.'"); *Razzoli v. Fed. Bureau of Prisons,* 230 F.3d 371, 377 (D.C. Cir. 2000) ("[A] *sua sponte* dismissal for failure to state a claim without leave to amend is reversible error unless 'the claimant cannot possibly win relief.'").

Since this Court decided *Alabama Legislative Black Caucus,* a conflict has arisen in the lower courts that necessitates this Court's intervention. In the case, this Court directed lower federal courts to confirm Article III jurisdiction and ensure that the plaintiff has standing, even without an attack on standing from the opposing party. *Alabama Legislative Black Caucus*, 575 U.S. at 270-71. This instruction is proper and unsurprising. More forceful in the Court's reasoning, the Court notes that in order to protect "elementary principles of procedural fairness," the district court in the case should have given the plaintiff an opportunity to provide their evidence of member residence in the state. *Id.*

The perceived conflicting directives resulting from the case have created turmoil among the circuits. *See* Petition at 28-30. The Eleventh Circuit itself has repeatedly ignored the portion of the holding protecting procedural fairness, and in multiple cases has raised issues of standing *sua sponte*. *See* Petition at 25-27. While it is important for a court to assure its jurisdiction, doing so without an opportunity for proper discovery blatantly ignores the rule set forth in *Alabama Legislative Black Caucus* as well as the fundamental fairness that is the basis of due process underscoring that decision. On the other hand, outside of the Eleventh Circuit, the central holding of *Alabama Legislative Black Caucus* is the protection of "elementary principles of procedural fairness." 575 U.S. at 270-71. Especially in cases where substantial statistical data is required to prove elements of a claim, denying a plaintiff the opportunity to engage in discovery and subsequently dismissing the case is

inappropriate. This case presents an opportunity for this Court to create a uniform standard for *sua sponte* action to ensure that the hallmarks of due process and procedural fairness are upheld.

CONCLUSION

For the foregoing reasons, amicus respectfully asks this Court to grant the Petition for Writ of Certiorari and reverse the decision of the Court of Appeals for the Eleventh Circuit.

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