No. 20-405

IN THE
Supreme Court of the United States

CITY OF MIAMI GARDENS,
Petitioner,
v.

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

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether *Alabama Legislative Black Caucus* v. *Alabama*, 575 U.S. 254 (2015), precludes a court from finding that a plaintiff lacks standing where the defendant moved for summary judgment on standing grounds, the plaintiff did not ask to delay summary judgment to pursue additional standing-related discovery, and the plaintiff cannot point to any evidence in the summary-judgment record that it suffered an injury-in-fact or that any injury was fairly traceable to the defendant's challenged conduct.

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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

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INTRODUCTION

It is a bedrock rule of civil procedure that, at summary judgment, a plaintiff invoking a federal court's jurisdiction must present proof of its standing. *See Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 561 (1992). That means the plaintiff must put forward evidence to show that it "has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision." *Hollingsworth* v. *Perry*, 570 U.S. 693, 704 (2013). Standing, by dint of its Article III roots, is so fundamental that a court has an independent duty to assure itself that the plaintiff

has standing. *United States* v. *Hays*, 515 U.S. 737, 742 (1995).

The court of appeals applied these foundational principles to conclude that Petitioner City of Miami Gardens lacked standing to maintain its Fair Housing Act (FHA) suit against Respondents Wells Fargo & Co. and Wells Fargo Bank, N.A. (collectively, Wells Fargo). The City's complaint alleged an attenuated causal chain whereby allegedly discriminatory loans made borrowers more likely to default, which could trigger foreclosure, which could lower property values and leave vacancies, which could lower property-tax revenues and cause the City to spend more on municipal services. But when Wells Fargo moved for summary judgment after an initial round of discovery, the City had no record evidence that it actually had suffered any of the injuries alleged in its complaint, much less that any of the injuries were fairly traceable to Wells Fargo's conduct. The City thus lacked standing, and the courts below lacked jurisdiction to hear the suit.

The City's petition does not meaningfully contest any of this. It instead argues that the City should get a do-over. That request comes too late. Wells Fargo argued in its summary-judgment motion that the City lacked standing, and it raised standing even before that in a motion to dismiss, during the meet-and-confer process, and in its answer to the City's complaint. The City did not say then that it needed more discovery, as Federal Rule of Civil Procedure 56(d) requires, but opposed summary judgment head-on. When Wells Fargo re-filed its summary-judgment motion after a lengthy pause while this Court was considering a similar FHA case, the City did belatedly move under Rule 56(d)—but its motion

had nothing to do with standing, and the district court resolved it by admitting the additional evidence that the City said it needed. Not until Wells Fargo again raised standing on appeal and the court of appeals identified a substantial standing problem did the City contend it needed additional discovery to prove an injury-in-fact traceable to Wells Fargo's conduct. That was far too late, and the court of appeals was correct to rule that the City lacked standing.

The City contends that it should get to try again based on *Alabama Legislative Black Caucus* v. *Alabama* (*ALBC*), which held that a party should be permitted to introduce evidence of standing when standing had never been put at issue, where the party had introduced evidence to raise an inference of standing, and where the party demonstrated on appeal that it already possessed evidence to show its standing. 575 U.S. 254, 270-271 (2015). Not one of those circumstances is present here, and the court of appeals correctly held that *ALBC* does not apply.

The City also half-heartedly asserts a circuit split, but not about what it says is the question presented—none of the City's cited circuit cases even mentions *ALBC*. Rather, the cases are about how to apply Rule 56 generally, and none of the City's cited cases conflicts with the decision below.

In reality, after losing at summary judgment, the City now regrets how it litigated below. The time and place for the City to raise its objections was in the district court during discovery and when Wells Fargo moved for summary judgment, not before this Court on a petition for a writ of certiorari.

The petition should be denied.

STATEMENT

A. District Court Proceedings.

1. This suit is one of many filed years after the 2008 financial crisis by cities and counties around the country against banks that made mortgage loans. *See, e.g.*, *Bank of Am. Corp.* v. *City of Miami*, 137 S. Ct. 1296, 1300-01 (2017). The municipalities allege that subprime lending practices from before the financial crisis caused minority borrowers to receive, on average, comparatively less-favorable loan terms in violation of the FHA. *See* Pet. App. 24a-25a. The municipalities are not suing on behalf of affected borrowers, however. The municipalities instead allege that they have been derivatively harmed when some of those loans led to foreclosure. *See id.* at 26a. In this case, the City alleges that it was injured through reduced property tax revenues from vacant foreclosed properties and surrounding homes and by having to spend more on municipal services to remedy blight caused by foreclosures and vacancies. *Id.*

The City filed its initial complaint in June 2014 based on allegations regarding Wells Fargo loans issued between 2004 and 2008. *Id.* at 24a. Wells Fargo moved to dismiss, in part arguing that the City lacked Article III standing. *See* D. Ct. Dkt. 22, at 7-8, 11. The district court granted the motion without prejudice. The court explained that the City's allegations had to be more precise and state "'the exact violations of the Fair Housing Act' and 'what specific predatory practices occurred in Miami Gardens.'" Pet. App. 25a.

The district court also warned that the City had to better allege standing. An amended complaint would

have to allege "facts that confer standing to complain about private home foreclosures, the specific injury to the governmental entity, the precise number and dates of foreclosures, and the specific costs to the City of Miami Gardens." *Id.* The district court told the City to explain "(1) how Miami Gardens is injured, (2) how that injury is traceable to the conduct of each Wells Fargo defendant, and (3) how the injury can be redressed with a favorable decision in this case." *Id.* at 70a; *see id.* at 25a.

After subsequent amendments, the third amended complaint alleged that Wells Fargo issued certain types of "predatory loans" disproportionately to minority borrowers. *Id.* at 25a-26a. To establish standing, the complaint posited an attenuated causal chain. *See id.* at 5a, 26a. As three Justices explained the City of Miami's essentially identical claims, the complaint hypothesizes that (1) banks offered less favorable loan terms to minority borrowers, who were then (2) more "likely to default on their home loans," sometimes leading (3) "to foreclosures," sometimes leading (4) "to vacant houses," which may lead (5) "to decreased property values for the surrounding homes." *City of Miami*, 137 S. Ct. at 1311 (Thomas, J., concurring in part and dissenting in part). In turn, (6) "those decreased property values resulted in homeowners paying lower property taxes to the city government," and then (7) "vacant homes eventually led to vagrancy, criminal activity, and threats to public health and safety, which the city had to address through the expenditures of municipal resources." *Id.* (internal quotation marks omitted). The City alleged that it could connect the dots in this causal chain through a series of statistical regressions by analyzing "thousands of housing

transactions" to isolate the effects of Wells Fargo's loans. *See* Pet. App. 37a-38a. In particular, the City alleged that it could apply a regression technique "to data regularly maintained by" the City itself "to quantify precisely the property tax injury to the City." D. Ct. Dkt. 38, at 21 ¶ 67.

By asserting this complex theory, the City took on "an uphill battle to establish its standing because it relied on an attenuated theory of injury." Pet. App. 4a-5a. To show that it "suffered an injury in fact" that was "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party," *id.* at 34a-35a (quoting *Lujan*, 504 U.S. at 560), the City had to not just *allege* this convoluted set of causal links, but also *prove* them.

2. Wells Fargo proposed a phased discovery process, with the first phase to focus on loans issued in the two-year statute-of-limitations period predating the City's 2014 complaint. *Id.* at 27a-28a. It explained that most of the allegedly "predatory" subprime lending practices the City complained of had ended well before 2012, so there was a serious question whether the City could establish the necessary "occurrence * * * of an alleged discriminatory housing practice" within the limitations period. 42 U.S.C. § 3613(a)(1)(A); *see* Pet. App. 27a. Even under the City's continuing-violation theory, it had to show that "the 'last asserted occurrence of th[e challenged] practice' occurred within the limitation period." Pet. App. 27a (quoting *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 381 (1982)). Bifurcation like this allowed speedy resolution of similar FHA cases brought by other municipalities on nearly identical theories. *See, e.g.*, *City of Los Angeles* v. *Wells Fargo*

& Co., 691 F. App'x 453, 454 (9th Cir. 2017) ("The district court did not err in granting summary judgment to Wells Fargo because the City did not show a discriminatory loan during the limitations period.").

The City objected to the bifurcation of discovery—but not because of Article III standing concerns. Rather, the City argued that bifurcation "would prevent it from 'prov[ing] its continuing violations and disparate impact allegations'"—that is, the merits of its FHA continuing-violations liability theory. Pet. App. 5a-6a.

The district court ordered bifurcation. *See id.* at 6a, 28a. In discovery, Wells Fargo produced detailed data on all 153 loans originated in Miami Gardens during the limitations period, as well as the written policies the City requested. *Id.* at 28a. For its part, Wells Fargo asked the City to produce evidence of standing, including a request that the City produce the data that the complaint said could "quantify precisely the property tax injury" suffered by the City. *See* D. Ct. Dkt. 99-3, at 14; *supra* p. 6. Both sides took depositions. Pet. App. 28a. The City deposed three Well Fargo officials, and Wells Fargo deposed two witnesses, including the City's manager as a party representative under Federal Rule of Civil Procedure 30(b)(6). *Id.*

The City requested an extension of the first-phase discovery deadline and subsequent summary-judgment briefing schedule, but it did not challenge the court's restrictions on what was discoverable or Well Fargo's discovery responses. *Id.* At a hearing before the magistrate judge overseeing discovery, the City also requested data concerning loans originated to borrowers living outside Miami Gardens. *Id.* at

28a-29a. The City did not request additional discovery related to standing. The magistrate judge extended the briefing schedule but denied the other requests, explaining that "discovery was in large part completed" and that the additional "discovery the plaintiff is now seeking should have been raised with opposing counsel and the Court earlier." *Id.* at 29a.

3. Wells Fargo moved for summary judgment following the close of first-phase discovery in March 2016. *Id.* Wells Fargo, as expected, argued that none of the loans issued during the limitations period violated the FHA. *Id.* at 30a-31a. But Wells Fargo *also* argued that the City lacked Article III standing. *Id.* It elaborated on the City's attenuated theory of standing and explained that, at summary judgment, the City had to "actually produce some evidence that [it], and not just the borrower, ha[d] Article III standing to sustain a claim under the" FHA. *Id.* at 6a.

Rather than file a Rule 56(d) declaration contending that it needed more discovery to oppose summary judgment, the City addressed the motion head-on. *See id.* at 29a, 31a. The City argued that its continuing-violation theory of liability did not require it to identify an injury arising during the limitations period—although it did not identify any evidence of injuries suffered from earlier-issued loans—and it pointed to one loan issued within the limitations period that was delinquent and suggested the loan might eventually be foreclosed on and injure the City. *Id.* at 31a.

With the summary-judgment briefing completed, the magistrate judge to whom the motion was referred for a report and recommendation heard oral

arguments. *See* Dist. Ct. Dkt. 138. Before the magistrate judge rendered a decision, however, the district court paused the case in light of this Court granting certiorari in *City of Miami*. Dist. Ct. Dkt. 148; *see* Pet. App. 29a.

4. After *City of Miami*, Wells Fargo asked the district court to decide the summary-judgment motion, and the district court granted Wells Fargo leave to refile its original motion. Pet. App. 29a.

At that point, in June 2017—more than a year after the original summary-judgment motion was fully briefed, argued, and teed up for decision—the City moved to postpone summary judgment until it could take additional discovery. But neither the motion nor the City's accompanying Rule 56(d) declaration argued that the City needed further discovery to establish standing. *Id.* at 12a-13a, 29a-30a.

At the hearing on the City's motion, the City principally argued that it needed further discovery to address certain merits issues that were beyond the scope of the statute-of-limitations issue. *Id.* at 30a. When the court indicated that the only merits issue to be decided was the statute of limitations, the City said the only further evidence it required to oppose summary judgment was to introduce a supplemental expert report, which the court allowed. *Id.* The City then continued to oppose summary judgment on the merits, with the district court allowing both sides to submit supplemental briefs. *See* D. Ct. Dkts. 190, 194, 197, 199-200. In its supplemental briefs, the City mentioned standing only once, and then only to discuss whether statutory standing required proof of injury within the limitations period—not to argue

that it had presented evidence of its Article III standing. *See* D. Ct. Dkt. 199, at 9-10; *cf. Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 128 n.4 (2014) (observing that "statutory standing" is not truly standing at all, as it relates to a claim's merits).

5. The district court granted summary judgment to Wells Fargo on the merits without passing upon the City's standing. Pet. App. 32a. The district court held that the City's case was doomed because it was bound by its Rule 30(b)(6) representative, who "conceded during his deposition that the City could not identify any 'predatory' or 'discriminatory' loans in the limitations period." *Id.* at 80a; *see id.* at 32a. The court also held that the City's only evidence of a FHA violation—two loans to minority borrowers that it said contained less-favorable terms than one loan issued to a non-Hispanic white borrower—was insufficient to prove a broader policy with disparate impact and could not demonstrate disparate treatment because the borrowers were not similarly situated. *Id*. at 33a, 84a-93a.

B. Court of Appeals Proceedings

1. On appeal, Wells Fargo defended the district court's decision on the merits but again raised the City's lack of standing as an alternative ground for dismissal. *Id*. at 7a, 34a. Wells Fargo pointed to the summary-judgment evidence that none of the 153 loans analyzed in discovery had been foreclosed on and that—contrary to the City's theory that Wells Fargo loans led to lower property values—the values on all those homes had *increased*, so "the City failed to establish any injury." Wells Fargo C.A. Br. 37-38. The City acknowledged Wells Fargo's standing

argument, but merely cited this Court's decision in the pleading-stage *City of Miami* case and argued that "this issue was authoritatively settled in the City's favor." C.A. Reply Br. 6 n.2. Neither the City's opening or reply briefs pointed "to *any* evidence that it sustained an injury traceable to the conduct of Wells Fargo." Pet. App. 36a.

Before oral argument, the court of appeals raised the standing issue in a letter, asking the parties to be prepared to discuss "whether the City has produced sufficient evidence of an injury caused by Wells Fargo's conduct to satisfy the requirements of Article III." C.A. May 30, 2019 Letter, at 1; *see* Pet. App. 36a. At oral argument and in a post-argument letter, the City pointed to two items. *See* Pet. App. 36a-37a. First, it "asserted that one of the allegedly discriminatory loans identified in" its expert's report had "been delinquent since it was issued," and "[t]he City speculated that" it might "go into foreclosure and cause the City to suffer the kind of economic injuries asserted in the operative complaint." *Id.* at 36a. Second, the City "pointed to ten loans identified in the complaint and an attached exhibit that were originated before the limitation period" and which the complaint alleged had been foreclosed on and declined in value. *Id.* at 36a-37a.

2. In a unanimous per curiam opinion, the court of appeals held that the City had not established its Article III standing and directed that the case be dismissed for lack of subject-matter jurisdiction. *Id.* at 37a, 47a.

As to the delinquent loan in the expert's report, the court explained that the "delinquency of a single loan does not establish a certainly impending risk that

the City will lose property-tax revenues or be forced to increase municipal spending to remediate blight." *Id.* at 37a. Further, that loan "fail[ed] to satisfy the requirement of causation" because the City had never actually conducted the statistical analyses described in the complaint to link lending behavior to municipal harms "and probably could not do so in the light of the paucity of allegedly discriminatory loans identified by the City." *Id.* at 37a-38a. Thus, even if the loan was eventually foreclosed on, the court "would not be able to determine the extent to which any decline in the value of the property would be 'fairly traceable to the challenged action[s] of the defendant.'" *Id.* at 38a (quoting *Lujan*, 504 U.S. at 560) (alterations in original).

And as to the ten loans referenced in the City's pleadings, the court explained that "the City did not produce any evidence of the effect of these foreclosures on property-tax revenues or municipal spending," nor did the City "attempt to isolate the contribution of Wells Fargo's actions, if any, to the decline in property value." *Id.* Those loans were therefore inadequate to establish either injury or traceability. *Id.*

In response to the City's assertion at oral argument that it would be unfair to require the City to produce standing evidence in light of the bifurcated discovery, the court of appeals explained that the district court's bifurcation order did not "bar the parties from raising jurisdictional issues on summary judgment" but simply "limited the merits issues to be considered" in the first phase. *Id.* at 39a. The court of appeals pointed out that Wells Fargo "prominently challenged" the City's Article III standing in its summary-judgment motion and that the City re-

sponded with the same evidence it asserted at oral argument on appeal. *Id.* at 40a-41a. In sum, the court of appeals found it clear that "for more than two years before the district court entered summary judgment," "both parties operated under the assumption that the City's standing was in dispute and actively litigated that issue." *Id.* at 41a.

The court of appeals also addressed *ALBC*, noting that both the Supreme Court and Eleventh Circuit "have determined that in limited circumstances, the absence of notice of the need to prove standing may mandate either the application of a more lenient standard or a remand for further development of the record." *Id.* But the court explained that neither *ALBC* nor the similar Eleventh Circuit cases "sp[oke] to circumstances like those of this appeal, in which the opposing party raised the issue of standing." *Id.* at 42a. The court further explained that *ALBC* "assumed that special notice was only necessary in a circumstance in which the plaintiff reasonably believed that he had satisfied a requirement of standing and the defendant had not argued the contrary," whereas here "Wells Fargo actively contested the City's proof of injury and causation." *Id.* at 42a-43a (citing *ALBC*, 575 U.S. at 270-271).

Nor could the district court's discovery limitations justify the City's failure to produce standing evidence because the City—as the party opposing summary judgment—had the burden to ask for further discovery if it needed it. *Id.* at 43a-44a. In fact, the City's Rule 56(d) declaration did not mention standing, and the only additional evidence the City said it needed was the supplemental expert report, which the district court admitted. *Id.* at 44a-45a. "And even on appeal, the City ha[d] failed to provide [the court]

with any explanation of how further discovery would have enabled it to establish standing." *Id.* at 46a.

In a concurring opinion, Judges William Pryor and Branch explained that "even if we had jurisdiction to decide the merits of this appeal, we would have to agree with the district court that Wells Fargo is entitled to summary judgment." *Id.* at 47a. The concurrence explained that the City's expert's analysis failed to establish any discrimination because the borrowers whose loans were being compared were not similarly situated. *Id.* at 58a. And the concurrence explained that the City's disparate-impact claim failed because it had put forward no meaningful evidence that any Wells Fargo policy systematically led to worse loan terms for minority borrowers. *Id.* at 63a-66a.

3. The City petitioned for rehearing en banc, and the court of appeals denied the petition. *See id.* at 3a. Two judges dissented, and Judge Wilson wrote a dissenting opinion. *Id.* at 15a. He argued that *ALBC* precluded summary judgment where a plaintiff was not "on notice that it needed to shore up its standing." *Id.* at 16a. Judge Wilson claimed that Wells Fargo's briefs had not put the City on sufficient notice because they were focused on the limitations period, and he argued that the City needed additional discovery on pre-limitations-period loans to prove standing. *Id.* at 17a-19a.

All three panel members concurred in the denial of en banc rehearing to respond to Judge Wilson's dissent. *Id.* at 3a. They pointed out that the City was on notice that it needed to prove its standing because the district court had warned it about standing when dismissing the original complaint and

because Wells Fargo had repeatedly raised standing "during the meet and confer process, in its answer to the operative complaint, and in its motion for summary judgment." *Id.* at 6a (internal quotation marks omitted). The panel members accepted Judge Wilson's characterization that Wells Fargo had argued that Article III standing required an injury from a loan within the limitations period and said that argument was "mistaken." *Id.* But even if that particular argument was wrong, Wells Fargo still "repeatedly contended that the injury and causation elements of standing were lacking." *Id.* The City had "received repeated notice of its need to prove its standing throughout the litigation from both the district court and Wells Fargo" and yet "failed to so much as create an *inference* that it had standing." *Id.* at 11a.

Nor was it unfair, the concurrence explained, that the City had not received discovery on pre-limitations-period loans because it had "effectively consented to adjudication of the issues * * * by failing to avail itself of the opportunity to seek further discovery." *Id.* at 12a-13a. Not only that, but the City failed to seek further discovery either through a Rule 56(d) declaration or when it was asked by the district court about whether additional evidence was required to decide the summary-judgment motion. *Id.* In short, "[t]he City was obliged to come to this litigation prepared to prove its standing or to let the district court know that it did not have the discovery it needed to do so." *Id.* at 14a. And because the City did not, dismissal on standing grounds was proper.

The City's petition for certiorari followed.

REASONS FOR DENYING THE PETITION

I. THE DECISION BELOW WAS CORRECT AND CONSISTENT WITH THIS COURT'S PRECEDENTS.

The court of appeals' decision is fully consistent with this Court's cases. The City complains that *ALBC* precluded the court of appeals from reaching standing when the district court did not. Pet. 18-25. But *ALBC*'s limited holding does not apply to cases like this where the defendants repeatedly put standing at issue and the plaintiff does not possess evidence that can prove its standing.

1. Standing is "an indispensable part of the plaintiff's case." *Lujan*, 504 U.S. at 561. "The federal courts are under an independent obligation to examine their own jurisdiction, and standing is perhaps the most important of the jurisdictional doctrines." *Hays*, 515 U.S. at 742 (internal quotation marks and alterations omitted). That is so "even if the courts below have not passed on it." *FW/PBS, Inc.* v. *City of Dallas*, 493 U.S. 215, 230 (1990). A federal court's duty to assure itself of jurisdiction is not the Eleventh Circuit's invention, but a constitutional obligation this Court has long recognized. *E.g.*, *ALBC*, 575 U.S. at 270; *Bender* v. *Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986); *Jenkins* v. *McKeithen*, 395 U.S. 411, 421 (1969) (plurality op.); *Mitchell* v. *Maurer*, 293 U.S. 237, 244 (1934).

"The party invoking federal jurisdiction bears the burden of establishing" standing, and because "they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden

of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561. Thus, "[i]n response to a summary judgment motion," the plaintiff "must set forth by affidavit or other evidence specific facts" to demonstrate its standing. *Id.* (internal quotation marks omitted). Standing "is ordinarily substantially more difficult to establish" when, as here, the plaintiff is not itself the object of the "action or inaction [it] challenges." *Id.* at 562 (internal quotation marks omitted).

ALBC acknowledged a limited exception to *Lujan*, but not one that applies here. In *ALBC*, one of the plaintiff organizations was challenging a state redistricting plan as an unconstitutional racial gerrymander, and the three-judge district court found *sua sponte* that the organization lacked standing because it did not prove that it had members in each of the four challenged districts. 575 U.S. at 268-269.

On direct appeal, this Court vacated and remanded for three specific reasons. First, there was testimony about the organization's statewide membership that "support[ed] an inference that the organization has members in all of the State's majority-minority districts," which included the four challenged districts. *Id.* at 269-270. Second, the defendant did not "challenge" standing nor did the lower court "request * * * more detailed information," and there was "nothing in the record" contradicting the organization's standing representations on appeal. *Id.* at 270. And third, although the district court had "an independent obligation to confirm its jurisdiction," the Court believed a *sua sponte* standing ruling was inappropriate when there was "no reason to believe" the organization could not easily show standing "had

it been asked," and the organization had on appeal submitted a membership list to prove its standing. *Id.* at 270-271.

Not one of these three unusual circumstances is present here. First, there is no record evidence creating an inference of standing, and when the court of appeals asked the City to identify record evidence, it could not. Pet. App. 36a-38a; *see supra* pp. 11-12. Just the opposite: the City's Rule 30(b)(6) witness testified that the City had no evidence that discriminatory loans were issued or that discriminatory loans injured the City. Pet. App. 73a-74a; *see id.* at 32a.

Second, Wells Fargo repeatedly challenged the City's standing at each stage of the case, and its summary-judgment motion specifically argued that there was no record evidence that the City had suffered an injury traceable to Wells Fargo's conduct. *See id.* at 6a-7a, 40a-41a; *supra* p. 8. And the district court made clear in dismissing the City's original complaint what precisely was required to establish standing, a standard the City never tried to meet. Pet. App. 6a-7a, 25a.

Third, because Wells Fargo repeatedly put standing at issue both in the district court and on appeal, the court of appeals did not raise standing *sua sponte*. And the City does not even now suggest that it can readily remedy its standing problem. In *ALBC*, all the Court required was that the district court on remand permit the plaintiff organization to "file [the] list of members" it had provided on appeal. 575 U.S. at 271. In contrast, the City here acknowledges that it lacks the necessary evidence to establish standing,

even if it were permitted to add to the record. *See, e.g.*, Pet. 4, 33-34.

Nor is it true, as the City asserts (at 4), that only Wells Fargo has "the necessary evidence to establish injury-in-fact related to" pre-limitations-period loans. The City knows far more about its own tax revenues and municipal-services spending than Wells Fargo does and even alleged that it could use its own data, combined with statistical models, to show its injury. *See supra* p. 6. Yet the City has never substantiated its claims that foreclosures on homes with Wells Fargo loans actually decreased tax revenue or increased municipal-services spending. As the court of appeals explained, "more than two years elapsed between Wells Fargo's filing of its motion for summary judgment and the order granting it, so the City had more than enough time to take any steps necessary to ensure that it would be able to prove standing." Pet. App. 42a.

The court of appeals was therefore entirely correct that this is case is nothing like *ALBC*. *See id.* at 10a-11a, 41a-43a.

2. The City's two principal counterarguments are wrong. First, it argues that *ALBC* stands for the much broader proposition that "a challenge to standing premised on an erroneous legal theory fails to provide the requisite notice." Pet. 21. The relevant passage from *ALBC*, however, said only that the defendant's attacks on *other parties'* standing did not put the specific plaintiff's standing at issue. 575 U.S. at 270. Wells Fargo here squarely and repeatedly challenged whether the City (not other parties, for there are no other plaintiffs in this case) had suffered an injury caused by Wells Fargo's conduct. *See*

supra pp. 4, 8, 10, 14-15. The court of appeals may have thought Wells Fargo was wrong to argue that Article III—as opposed to the FHA's statute of limitations—required injuries resulting from loans issued during the limitations period, Pet. App. 36a, but that does nothing to undermine the clear notice the City had that injury-in-fact and traceability were at issue.

Second, the City (at 23-24) woefully misconstrues the court of appeals' decision in arguing that it distinguished *ALBC* on the ground that *ALBC* applied "only to a district court and only to the early stages of a case." The passage the City cites (Pet. App. 42a) says nothing of the sort. Rather, the court of appeals said that *ALBC* does "not purport to speak to circumstances like those of this appeal, in which the opposing party raised the issue of standing" and that *ALBC* "assumed that special notice was only necessary in a circumstance in which the plaintiff reasonably believed that he had satisfied a requirement of standing and the defendant had not argued the contrary." Pet. App. 42a-43a. That interpretation is completely consistent with *ALBC*. *See* 575 U.S. at 270-271.

3. Perhaps recognizing that *ALBC* is not analogous, the City contends (at 25-27) that *other* Eleventh Circuit decisions are inconsistent with *ALBC*. Even if unrelated cases were relevant to this one, the City does not even believe the Eleventh Circuit uniformly contravenes *ALBC* because it argues that the decision below conflicts with an Eleventh Circuit case that "anticipated" *ALBC*. Pet. 21-22 n.2 (citing *Church* v. *City of Huntsville*, 30 F.3d 1332, 1336 (11th Cir. 1994)); *see also id.* at 34. Yet, as the court of appeals explained, *Huntsville* was inapplicable for

reasons similar to *ALBC*: it required special notice only when the defendant did not squarely challenge standing. Pet. App. 42a; *see also id.* at 9a-10a.

The other Eleventh Circuit cases that the City cites are consistent with *ALBC*. In *Jacobson* v. *Florida Secretary of State*, the defendant had put forward "weighty challenges" to the plaintiffs' "standing under Article III." 974 F.3d 1236, 1245 (11th Cir. 2020). The case had nothing to do with *ALBC*—which it never cited—and it is not clear why the City believes there is a conflict.

United States v. *Amodeo*, 916 F.3d 967 (11th Cir. 2019), is similar. The court there held that an appellant lacked standing when the order being appealed could not have affected him. *Id.* at 971-973. Again, *ALBC* was not mentioned, and the appellant argued that he *did* have standing—not that it was unfair to hold him to his standing burden. *See id.* at 971-972.

The City's invocation (at 27) of *Greater Birmingham Ministries* v. *Secretary of State for Alabama*, 966 F.3d 1202 (11th Cir. 2020), is more puzzling still. The court of appeals there merely followed this Court's instructions that it had an independent obligation to assure itself of standing even if the parties did not raise it, *see supra* p. 16, and concluded that the plaintiff *did* have standing. *Greater Birmingham Ministries*, 966 F.3d at 1219-20. The City does not explain what the conflict with *ALBC* is.

4. If nothing else, the City's petition is a poor candidate for certiorari because it at most contends that the court of appeals' decision was a "misapplication of a properly stated rule of law." Sup. Ct. R. 10. The court of appeals—in both its opinion and in the panel members' concurrence in the denial of rehearing—

considered *ALBC* at length. Pet. App. 4a, 10a-11a, 14a, 41a-43a. It simply—and correctly—disagreed with the City that *ALBC* required it to remand for further discovery. That is the kind of case-specific application of this Court's precedents that this Court does not grant review to decide.

II. THE COURT OF APPEALS' DECISION FAITHFULLY APPLIED RULE 56(d).

Given that the question presented and most of the City's arguments are about *ALBC*, one would expect that the City would posit an *ALBC*-centered circuit split. Yet not one of the cases the City cites in its circuit-split argument (at 28-30) even mentions *ALBC*. Most predate *ALBC*, many by decades, and all are primarily about the far-more-general question of how to apply Rule 56. And most importantly, none conflicts with the court of appeals' decision.

1. Federal Rule of Civil Procedure 56(d) provides that in response to a summary-judgment motion, "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition," then "the court may" "defer considering the motion," "allow time to obtain affidavits or declarations or to take discovery," or "issue any other appropriate order." Fed. R. Civ. P. 56(d). On its face, the rule does not apply here because the City never even attempted to show "by affidavit or declaration" that it could not "present facts" to support its Article III standing. *Id.* The City did not make a Rule 56(d) objection to the original summary-judgment motion, and its Rule 56(d) declaration opposing the re-filed summary-judgment motion did not address standing and was resolved when the district court accepted the supplemental expert

report the City said it needed to oppose summary judgment—a report that had nothing to do with standing. *See* Pet. App. 44a-46a; *supra* pp. 8-10.

The City (at 28) cites *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 322 (1986), for the uncontroversial proposition that summary judgment is appropriate only after adequate time for discovery. But *Celotex* did not undermine Rule 56(d)'s requirement that the nonmoving party has the burden to explain why existing discovery is inadequate. Indeed, *Celotex* held that when a party moves for summary judgment and explains that the opposing party cannot meet "an essential element of her case"—as Wells Fargo did here in challenging the City's standing—summary judgment is required unless the nonmoving party comes forward with contrary evidence. 477 U.S. at 322-323. "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims * * * ." *Id.* at 323-324. So it was here.

2. None of the circuit-court cases the City cites conflicts with the court of appeals' decision, either. It merely applied Rule 56(d)'s text to find that the City did not justify its new claims that it needed more discovery to prove its standing.

In *Jeffries* v. *Barr*, the D.C. Circuit explained that "a Rule 56(d) movant must: (1) outline the particular facts [it] intends to discover and describe why those facts are necessary to the litigation; (2) explain why the party could not produce those facts in opposition to the pending summary-judgment motion; and (3) show that the information is in fact discoverable." 965 F.3d 843, 855 (D.C. Cir. 2020) (internal quotation marks and alteration omitted). The City did

none of those things in a Rule 56(d) motion or declaration, and did not even attempt to do so until the court of appeals raised the City's standing problem. The case would have come out the same way under *Jeffries*.

Block Island Fishing, Inc. v. *Rogers* concerned Rule 56(*f*) governing *sua sponte* summary-judgment decisions and explained that they are only appropriate when discovery is "sufficiently advanced that the parties have enjoyed a reasonable opportunity to glean the material facts." 844 F.3d 358, 363 (1st Cir. 2016) (internal quotation marks omitted). But Rule 56(f) has nothing to say about this case because summary judgment was not *sua sponte*; Wells Fargo raised the City's standing problems at every turn. Even if the rule were relevant, however, it does not change Rule 56(d)'s duty for the non-moving party to explain why further discovery is necessary.[1]

The City next provides a lengthy string-cite of cases (at 28-29) that stand for the generic proposition that summary judgment is appropriate only after sufficient discovery. None purports to abrogate Rule 56(d)'s requirement for the nonmoving party to explain why further discovery is required, and the City does not argue that any does.

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[1] Likewise, the City's reference (at 32) to *Routman* v. *Automatic Data Processing, Inc.*, 873 F.2d 970 (6th Cir. 1989), is off-base. That decision held that a district court abused its discretion when it "*sua sponte*" granted "summary disposition of the case on an issue that appellant was foreclosed from pursuing during discovery and briefing." *Id.* at 972. Summary judgment here was not *sua sponte*, and the City was permitted to pursue standing discovery and to brief the issue in response to Wells Fargo's summary-judgment motion.

Last, the City (at 30) cites a handful of cases finding summary judgment inappropriate when the plaintiff was not given the discovery necessary to support a discrimination claim. Had the City filed a Rule 56(d) declaration saying it needed more data to prove its standing—or even attempted to explain why its own tax-collections and municipal-spending data could not establish standing—those cases would perhaps be relevant. But none of them touches on Rule 56(d), nor does any allow a nonmoving party to say it needs more discovery to oppose summary judgment only after it has lost the motion.

In short, the City has not identified a single circuit in which this case would come out differently—not under Rule 56(d), and certainly not under *ALBC*. There is no conflict for this Court to resolve.

III. THIS CASE WOULD BE A POOR VEHICLE TO CONSIDER *ALBC*'S CONTOURS.

Nothing in the court of appeals' decision is in tension with *ALBC*, and the City has not even attempted to show any division about *ALBC* among the circuit courts. But even if this Court were interested in considering how far *ALBC* reaches, this case would be a poor vehicle to do so.

First, as the discussion of the putative circuit split makes clear, this case is more about Rule 56(d) than *ALBC*. The court of appeals below simply applied its longstanding rule that "the party opposing the motion for summary judgment bears the burden of calling to the district court's attention any outstanding discovery." Pet. App. 43a (quoting *Snook* v. *Tr. Co. of Georgia Bank of Savannah, N.A.*, 859 F.2d 865, 871 (11th Cir. 1988)). Even now, the City

acknowledges that it agreed to "stand pat with the discovery it had available to it" in opposing summary judgment. Pet. 33. To get past the City's fatal failure to raise a standing-based Rule 56(d) objection, this Court would have to review whether the court of appeals was correct about the extent to which Wells Fargo's summary-judgment motion and the district court's orders put the City on notice that its standing was at issue. And that means the City is asking this Court to resolve an "asserted error" that "consists of erroneous factual findings"—circumstances under which "certiorari is rarely granted." Sup. Ct. R. 10.

Second, the petition's repeated complaints (at 3, 6-7, 31-32) reveal that the City's arguments are largely premised on its dissatisfaction with how the district court managed discovery. But district courts have wide discretion to manage discovery "to secure the just, speedy, and inexpensive determination of every action," Fed. R. Civ. P. 1, and the district court's discovery decisions were subject to a deferential abuse-of-discretion review, *see Johnson* v. *Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001).

Moreover, this Court has blessed efforts like the district court's to streamline discovery. The Court has said that "it is proper to deny discovery of matter that is relevant only to * * * events that occurred before an applicable limitations period," *Oppenheimer Fund, Inc.* v. *Sanders*, 437 U.S. 340, 352 (1978), and has instructed lower courts to manage FHA cases to enable "prompt resolution," *Texas Dep't of Hous. & Cmty. Affairs* v. *Inclusive Communities Project, Inc.*, 576 U.S. 519, 543 (2015). There is no reason for this Court to wade into a factbound discovery dispute.

Third, the question presented is not outcome-determinative. Even if the City had standing, the district court provided numerous reasons why Wells Fargo was entitled to summary judgment on the merits, not the least of which was that the City's manager testified pursuant to Rule 30(b)(6) that the City could not identify any discriminatory loans within the limitations period. *See* Pet. App. 80a-82a. And a majority of the court of appeals panel said they would have reached the same result because of the City's paucity of evidence that Wells Fargo discriminated, which was based on comparing just two minority-borrower loans to a single non-comparable loan. *Id.* at 55a-66a; *see supra* p. 14. This Court should not wade into the standing issue in this case when it would make no difference because the court of appeals has already said it would affirm on the merits.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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