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## Wells Fargo v. City of Oakland: A Matter of Proximate Cause

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## CASE SUMMARY

### *WELLS FARGO V. CITY OF OAKLAND: A MATTER OF PROXIMATE CAUSE*

SHAWNA DOUGHMAN\*

#### INTRODUCTION

President Lyndon B. Johnson<sup>1</sup> saw passage of the Fair Housing Act (“FHA”)<sup>2</sup> to be a fitting tribute to the Reverend Dr. Martin Luther King, Jr., who had just been assassinated. The United States was in turmoil, much as it is today, with cities burning and people divided.<sup>3</sup> The FHA was first introduced by Democratic senator Walter Mondale.<sup>4</sup> The lobbying efforts of Republican senator Edward Brooke, the first Black senator to be elected by popular vote, and Democratic senator Edward Kennedy finally brought this legislation to fruition<sup>5</sup> as Title VIII of the Civil Rights Act of 1968.<sup>6</sup> Senator Mondale remarked, “in truly integrated

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<sup>1</sup> “President Lyndon B. Johnson established the National Advisory Commission on Civil Disorders (commonly known as the ‘Kerner Commission’). The Kerner Commission found that several government-sanctioned practices disadvantaged racial and ethnic minorities’ fair access to housing, including rapid urbanization, the flight of white families to suburban neighborhoods, racially restrictive covenants, real estate agents who steered homebuyers into racially homogenous areas, and discriminatory lending practices like redlining and reverse redlining.” *City of Oakland v. Wells Fargo & Co.*, 972 F.3d 1112, 1117 (9th Cir. 2020).

<sup>2</sup> The FHA makes it unlawful to discriminate against people in any housing practices because of race, color, religion, sex, familial status or national origin. 42 U.S.C. §§ 3601 *et seq.*

<sup>3</sup> *History of Fair Housing*, HUD.GOV, [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/aboutfheo/history](https://www.hud.gov/program_offices/fair_housing_equal_opp/aboutfheo/history) (last visited Oct. 8, 2020).

<sup>4</sup> Eric W.M. Bain, *Race, Disparate Impact and the Federal Housing Administration*, RACE, RACISM AND THE LAW, <https://www.racism.org/articles/basic-needs/propertyland/301-housing/1442-another-missed-opportunity?start=1>, (last visited Oct. 21, 2020).

<sup>5</sup> *Id.*

<sup>6</sup> 42 U.S.C. §§ 3601 *et seq.*

neighborhoods, people have been able to live in peace and harmony—and both [Blacks] and whites<sup>7</sup> are richer for the experience.”<sup>8</sup>

Although the FHA has been “rightfully lauded as one of the greatest achievements of the civil rights movement,”<sup>9</sup> discriminatory lending practices have continued.<sup>10</sup> These lending practices, called redlining<sup>11</sup> and reverse redlining (also known as predatory lending),<sup>12</sup> have not ceased to devastate individuals, families, neighborhoods and cities.<sup>13</sup> In 2018, the City of Oakland, California (“Oakland”), sued Wells Fargo to address part of what the FHA set out to do: end discrimination in lending.<sup>14</sup> The court quoted senator Mondale, the chief sponsor of the FHA, who cited cities’ declining tax bases as a specific injury traced to discrimination in housing.<sup>15</sup> Wells Fargo appealed to the Ninth Circuit, and pursuant to the Supreme Court’s decision in *Bank of America Corporation v. City of Miami* (“*Miami I*”),<sup>16</sup> the court held that Oakland must be given a chance to prove that its harm was within the zone of interest affected by Wells Fargo’s actions.

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<sup>7</sup> John Daniszewski, *Why we will lowercase white*, AP THE DEFINITIVE SOURCE (July 20, 2020), [https://blog.ap.org/announcements/why-we-will-lowercase-white?utm\\_campaign=SocialFlow&utm\\_source=twitter&utm\\_medium=AP\\_CorpComm](https://blog.ap.org/announcements/why-we-will-lowercase-white?utm_campaign=SocialFlow&utm_source=twitter&utm_medium=AP_CorpComm).

<sup>8</sup> 114 CONG. REC. 3421, 3422 (Feb. 20, 1968).

<sup>9</sup> *City of Oakland v. Wells Fargo & Co.*, 972 F.3d 1112, 1117 (9th Cir. 2020).

<sup>10</sup> *City of Oakland v. Wells Fargo Bank, N.A.*, No. 15-cv-04321-EMC, 2018 U.S. Dist. LEXIS 100915, at \*3 (N.D. Cal. June 15, 2018).

<sup>11</sup> “Redlining is the practice of denying home loans to residents of minority neighborhoods.” *City of Oakland v. Wells Fargo & Co.*, 972 F.3d 1112, 1118 (9th Cir. 2020). As part of the government-sponsored Home Owners’ Loan Corporation in the 1930s, the government developed color-coded maps with minority neighborhoods marked in red to show those that were the riskiest areas to insure mortgages. Abdallah Fayyad, *The Unfulfilled Promise of Fair Housing*, THE ATLANTIC (Mar. 31, 2018), <https://www.theatlantic.com/politics/archive/2018/03/the-unfulfilled-promise-of-fair-housing/557009>. Between 1934 and 1962, virtually all loans for housing through this federal program went to white homeowners, resulting in the segregation of today. Abdallah Fayyad, *The Unfulfilled Promise of Fair Housing*, THE ATLANTIC (Mar. 31, 2018), <https://www.theatlantic.com/politics/archive/2018/03/the-unfulfilled-promise-of-fair-housing/557009>.

<sup>12</sup> “Reverse redlining. . . is the practice of issuing home loans to minority borrowers with significantly higher costs and more onerous terms than those offered to similarly situated White borrowers—also known as ‘predatory loans.’ Predatory loans include, for example, subprime loans, negative amortization loans, ‘No-Doc’ loans that require no supporting evidence of a borrower’s income, loans with balloon payments, and ‘interest only’ loans that carry a prepayment penalty.” *City of Oakland v. Wells Fargo & Co.*, 972 F.3d 1112, 1118 (9th Cir. 2020).

<sup>13</sup> Abdallah Fayyad, *supra* note 11, at 12.

<sup>14</sup> *City of Oakland v. Wells Fargo Bank, N.A.*, No. 15-cv-04321-EMC, 2018 U.S. Dist. LEXIS100915, at \*2-3 (N.D. Cal. June 15, 2018).

<sup>15</sup> *Id.* at \*16 (quoting 114 CONG. REC. 2274 (Feb. 6, 1968)).

<sup>16</sup> *Bank of America Corp. v. City of Miami* (“*Miami I*”), 137 S. Ct. 1296 (2017).

## I. BACKGROUND

## A. FACTUAL BACKGROUND

Oakland alleged that Wells Fargo engaged in predatory lending and discriminatory lending practices with Oakland residents, resulting in high rates of foreclosures and harm to Oakland.<sup>17</sup> Oakland claimed that this practice constituted both intentional and disparate-impact discrimination.<sup>18</sup> Based on what Oakland alleged were Wells Fargo's discriminatory behaviors, Oakland claimed three kinds of injuries: (1) decreased property taxes, (2) increased municipal expenditures to maintain foreclosed properties, and (3) neutralized spending Oakland had earmarked for other needs to support fair housing.<sup>19</sup>

Wells Fargo moved to dismiss for failure to state a claim upon which relief could be granted.<sup>20</sup> The main thrust of Wells Fargo's motion was that Oakland could not establish proximate cause.<sup>21</sup> This decision by the Ninth Circuit is pursuant to *Miami I*.<sup>22</sup> In *Miami I*, the Supreme Court considered a similar case in which the city of Miami sued Wells Fargo and Bank of America, alleging that they "intentionally issued riskier mortgages on less favorable terms to African-American and Latino customers than they issued to similarly situated white, non-Latino customers."<sup>23</sup> The Court considered, under the FHA, whether Miami had prudential standing (different from constitutional standing)<sup>24</sup> to bring suit, and whether Bank of America's and Wells Fargo's actions proximately caused Miami's injuries.<sup>25</sup>

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<sup>17</sup> City of Oakland v. Wells Fargo Bank, N.A., No. 15-cv-04321-EMC, 2018 U.S. Dist. LEXIS 100915, at \*3 (N.D. Cal. June 15, 2018).

<sup>18</sup> *Id.* at \*3.

<sup>19</sup> *Id.*

<sup>20</sup> A Rule 12(b)(6) motion requests dismissal of a case, claiming that even if all the allegations are true, there is still not a claim that can lead to relief. To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the complaint must include facts sufficient to "state a claim to relief that is plausible on its face." Bell Atl., Corp. v. Twombly, 550 U.S. 544, 570 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009).

<sup>21</sup> City of Oakland v. Wells Fargo Bank, N.A., No. 15-cv-04321-EMC, 2018 U.S. Dist. LEXIS 100915, at \*3 (N.D. Cal. June 15, 2018).

<sup>22</sup> *Id.* at \*3 (citing Bank of America Corp. v. City of Miami, 137 S. Ct. 1296 (2017)).

<sup>23</sup> *Miami I*, 137 S. Ct. at 1301.

<sup>24</sup> "To satisfy the Constitution's restriction of this Court's jurisdiction to 'Cases' and 'Controversies,' Art. III, § 2, a plaintiff must demonstrate constitutional standing. To do so, the plaintiff must show an 'injury in fact' that is 'fairly traceable' to the defendant's conduct and 'that is likely to be redressed by a favorable judicial decision.'" Bank of America Corp. v. City of Miami, 137 S. Ct. 1296, 1302 (2017) (quoting Spokeo v. Robins, 136 S. Ct. 1540, 1547 (2016)).

<sup>25</sup> City of Oakland v. Wells Fargo Bank, N.A., No. 15-cv-04321-EMC, 2018 U.S. Dist. LEXIS 100915, at \*3 (N.D. Cal. June 15, 2018). The question of prudential standing concerns "the question whether the interest sought to be protected by the complainant is arguably within the zone

One question that prudential standing asks is whether the person or entity bringing the suit falls within the zone of interests meant to be protected by a statute, here the FHA, thus creating an “aggrieved person” the statute is meant to protect.<sup>26</sup> Proximate cause is a concept that asks whether an injury is sufficiently close in time and space to a given action, such that it is legally appropriate to attribute the injury to that action.<sup>27</sup> The *Miami I* Court relied on the analysis in *Lexmark International, Inc. v. Static Control Components, Inc.*, where it held “[p]roximate-cause analysis is controlled by the nature of the statutory cause of action. The question it presents is whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits.”<sup>28</sup>

Oakland claimed Wells Fargo discriminated against Oakland residents through facially neutral practices. Though facially neutral, these practices resulted in unequal access to loans, loan terms, and information in minority communities, carried out by employees with too little guidance and too many improper incentives to sell to minority borrowers.<sup>29</sup> Oakland alleged that Wells Fargo’s practices resulted in more expensive, less straightforward loans for Black and Latino borrowers, referred to as high cost/high risk loans (HCHR).<sup>30</sup>

Oakland relied on regression analyses,<sup>31</sup> mathematical techniques it used to isolate the effects of predatory lending on Oakland neighborhoods.<sup>32</sup> The analyses showed Black borrowers were 2.583 times more

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of interests to be protected or regulated by the statute or constitutional guarantee in question.” *Ass’n. of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970).

<sup>26</sup> The FHA provides that an “aggrieved person may commence a civil action in an appropriate United States district court or State court. . .to obtain appropriate relief with respect to [a] discriminatory housing practice[.]” 42 U.S.C. § 3613(a)(1)(A). An aggrieved person is further defined as any person who “claims to have been injured by a discriminatory housing practice.” 42 U.S.C. § 3602(i). “We hold that the City’s claimed injuries fall within the zone of interests the FHA arguably protects. Hence, the City is an ‘aggrieved person’ able to bring suit under the statute.” *Miami I*, 137 S. Ct. at 1301.

<sup>27</sup> Proximate cause is “[a] cause that is legally sufficient to result in liability.” *Proximate Cause*, BLACK’S LAW DICTIONARY (10th ed. 2014). Proximate cause typically requires an injury to be a reasonably foreseeable result of a given action. See generally *Palsgraf v. Long Island R.R.*, 162 N.E. 99 (N.Y. 1928).

<sup>28</sup> *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1390 (2014) (holding that a replacement part maker had standing to sue a printer and cartridge company who misled customers. Prudential standing was granted as the maker was found to be within the zone of interests under 15 U.S.C. § 1125).

<sup>29</sup> *City of Oakland v. Wells Fargo Bank, N.A.*, No. 15-cv-04321-EMC, 2018 U.S. Dist. LEXIS 100915, at \*5 (N.D. Cal. June 15, 2018).

<sup>30</sup> *Id.* at \*6.

<sup>31</sup> Regression analysis is “the use of mathematical and statistical techniques to estimate one variable from another. . .” *Regression Analysis*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/regression%20analysis#:~:text=save%20Word-,Definition%20of%20regression%20analysis,regression%20lines%20to%20empirical%20data> (last visited October 8, 2020).

<sup>32</sup> *City of Oakland*, 972 F.3d at 1120.

likely than white borrowers to receive a HCHR loan.<sup>33</sup> Latino borrowers were 3.312 times more likely to receive a HCHR than a white borrower.<sup>34</sup> The regression analyses relied on by Oakland controlled for such independent factors as credit score but did not take into account other variables such as job loss, medical hardship, or divorce, cited as critical “life events” by Wells Fargo.<sup>35</sup>

As a defense, Wells Fargo argued that these life events are to blame for increased foreclosures.<sup>36</sup> However, the court countered that by making this argument Wells Fargo was implying “that minority borrowers are somehow more likely than white borrowers to get divorced, suffer from medical hardships, or lose their jobs.”<sup>37</sup> HCHR loans are more expensive and riskier than typical loans, which makes them more likely to result in a default on the loan and a foreclosed property.<sup>38</sup> The court did not agree with Wells Fargo’s claim that the life events caused the default, but rather held that the higher incidence of HCHR loans in minority neighborhoods caused more foreclosures.<sup>39</sup>

Oakland claimed Wells Fargo injured the city in three ways. First, the foreclosed properties, as well as related short sales and vacancies, led to lower property values, which in turn led to lower property-tax revenue for the city.<sup>40</sup> Second, the city claimed a corresponding increase in “vagrancy, criminal activity, fire hazards, and threats to public health and safety.”<sup>41</sup> These dangers caused the city unnecessary expenditures and exacerbated already lowering property values, again affecting tax revenues.<sup>42</sup> Finally, Wells Fargo’s practices disproportionately affected city minorities, which “impair[ed] the City’s goals of racial integration and non-discrimination in housing, and adversely impact[ed] the City’s numerous programs in pursuit of those goals, neutralizing spending on those programs.”<sup>43</sup> However, as to the third claim, Oakland did not rely on regression analyses or other statistical tools for support.<sup>44</sup>

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<sup>33</sup> *City of Oakland v. Wells Fargo Bank, N.A.*, No. 15-cv-04321-EMC, 2018 U.S. Dist. LEXIS 100915, at \*6 (N.D. Cal. June 15, 2018).

<sup>34</sup> *Id.* at \*6.

<sup>35</sup> *City of Oakland*, 972 F.3d at 1134

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *City of Oakland v. Wells Fargo Bank, N.A.*, No. 15-cv-04321-EMC, 2018 U.S. Dist. LEXIS 100915, at \*6-7 (N.D. Cal. June 15, 2018).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at \*7.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at \*8 (internal quotation marks omitted).

<sup>44</sup> *City of Oakland*, 972 F.3d at 1121.

## B. PROCEDURAL BACKGROUND

Oakland sued Wells Fargo in the United States District Court for the Northern District of California.<sup>45</sup> In addition to monetary damages, Oakland further sought to enjoin Wells Fargo from the predatory practices it allegedly employed against Black and Latino borrowers.<sup>46</sup>

While the case was pending, the Supreme Court granted certiorari in *Miami I*.<sup>47</sup> Because of the overt similarity between the two cases, the district court stayed the proceedings to wait for a ruling from the Supreme Court.<sup>48</sup> In *Miami I*, the Supreme Court held that a plaintiff must establish proximate cause by more compelling reasons than that the aforementioned injuries “foreseeably flowed from the alleged statutory violation.”<sup>49</sup> The lower court in *Miami I* determined that the city proved its financial injuries were a foreseeable result of the banks’ practices, but the Supreme Court held that foreseeability alone was not sufficient to prove proximate cause.<sup>50</sup> The Court held that, although “[t]he housing market is interconnected with economic and social life,” Congress did not intend to provide a remedy for “any foreseeable result of an FHA violation.”<sup>51</sup> The Court left for “lower courts [to] define. . . the contours of proximate cause under the FHA.”<sup>52</sup> Additionally, the lower courts would need to “decide how that standard applies to the City’s claims for lost property-tax revenue and increased municipal expenses.”<sup>53</sup>

The district court instructed Oakland to amend its complaint consistent with the decision in *Miami I*.<sup>54</sup> The Northern District of California denied Wells Fargo’s motion to dismiss regarding Oakland’s claim for decreased property taxes.<sup>55</sup> The court also allowed claims for the second injury (increased municipal expenditures to maintain foreclosed properties), but only for injunctive and declaratory relief, declining without prejudice Oakland’s attempt to seek damages.<sup>56</sup> Lastly, the court dismissed without prejudice Oakland’s claim regarding neutralized spending for other needs to support fair housing. The court viewed the claim as

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See *Bank of America Corp. v. City of Miami*, 137 S. Ct. 1296 (2017).

<sup>48</sup> *City of Oakland*, 972 F.3d at 1121.

<sup>49</sup> *Miami I*, 137 S. Ct. at 1301.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *City of Oakland*, 972 F.3d at 1121.

<sup>55</sup> *Id.* at 1117.

<sup>56</sup> *Id.*

threadbare, without “precisely ascertain[ing]” how and to what extent Wells Fargo’s conduct impacted Oakland’s municipal expense output.<sup>57</sup>

Wells Fargo appealed the case to the Ninth Circuit.<sup>58</sup> The Ninth Circuit affirmed in part and dismissed in part the findings of the district court.<sup>59</sup> The court affirmed the district court’s “denial of Wells Fargo’s motion to dismiss as to Oakland’s claims for lost property-tax revenues and the district court’s grant of Wells Fargo’s motion to dismiss as to Oakland’s claims for increased municipal expenses.”<sup>60</sup> However, the court reversed the “district court’s denial of Wells Fargo’s motion to dismiss as to Oakland’s claims seeking injunctive and declaratory relief” and remanded the claim.<sup>61</sup>

## II. ANALYSIS

The Supreme Court identified two prongs for analysis by lower courts: (1) the definition of the “contours of proximate cause under the FHA,” and (2) the decision of “how that standard applies to the City’s claim for lost property-tax revenues and increased municipal expenses.”<sup>62</sup>

### A. THE CONTOURS OF PROXIMATE CAUSE UNDER THE FHA

Proximate cause analysis requires “some direct relation between the injury asserted and the injurious conduct alleged.”<sup>63</sup> To prove proximate cause, the Court suggests looking to “the first step” between injury and conduct.<sup>64</sup> This process requires an analysis of two sub-components: (1) an assessment of the “nature of the statutory cause of action,”<sup>65</sup> and (2) determining “what is administratively possible and convenient.”<sup>66</sup>

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<sup>57</sup> *Id.* at 1136.

<sup>58</sup> *City of Oakland v. Wells Fargo & Co.*, 972 F.3d 1112 (9th Cir. 2020).

<sup>59</sup> *Id.* at 1117.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Miami I*, 137 S. Ct. at 1306.

<sup>63</sup> *Id.* at 1306 (quoting *Holmes v. Sec. Inv’r Prot. Corp.*, 503 U.S. 258, 268 (1992)).

<sup>64</sup> *Miami I*, 137 S. Ct. at 1306 (quoting *Hemi Group, LLC v. City of New York*, 559 U.S. 1, 10 (2010)).

<sup>65</sup> *Id.* (quoting *Lexmark Int’l Inc. v. Static Control Components, Inc.* 134 S. Ct. 1377, 1390 (2014)).

<sup>66</sup> *Id.* (quoting *Holmes v. Sec. Inv’r Prot. Corp.*, 503 U.S. 258, 268 (1992)).



1. *The Nature of the Statutory Cause of Action*

The Ninth Circuit analyzed the FHA's text and legislative history to determine the intent of Congress in its enactment, and whether the injuries to a city were likely to be considered sufficiently close to a bank's unlawful practices to establish proximate cause.<sup>67</sup> The FHA text reveals a broad inclusion intent.<sup>68</sup> The law's broad purpose is to "provide, within constitutional limitations, for fair housing throughout the United States."<sup>69</sup>

The Ninth Circuit concluded that the FHA is "widely considered one of the most capacious civil rights statutes, in large part due to its broad language."<sup>70</sup> The FHA prohibits any form of discrimination in the sale, rental, construction, improvement, maintenance, advertisement, terms, conditions, notices, representations, or services of any form of real estate.<sup>71</sup> Indeed, senator Mondale said that continued housing discrimination would "lead to the destruction of urban centers by loss of jobs and businesses to the suburbs, a declining tax base, and the ruin brought on by absentee ownership of property."<sup>72</sup> The Ninth Circuit found this "far-reaching language" to be evidence of a broad and inclusive interpretation regarding Congress's intent to eliminate discrimination in real estate.<sup>73</sup>

The legislative history is similarly sweeping. The Ninth Circuit observed the Supreme Court's prior reliance on *Trafficante v. Metropolitan Life Insurance Company* as an indication of the FHA's desired breadth.<sup>74</sup> *Trafficante* held that tenants in an apartment building who were not discriminated against could still sue their landlord under the FHA for depriving them of diversity because the landlord discriminated against minority prospective tenants.<sup>75</sup> *Trafficante* indicated that while discriminatory practices directly impact minority groups, those who are "not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered."<sup>76</sup> The "whole community" is the victim of discriminatory practices under the FHA.<sup>77</sup> The court quoted *Trafficante*, agreeing that the FHA allows claims from parties "act[ing] not only on

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<sup>67</sup> *City of Oakland*, 972 F.3d at 1122.

<sup>68</sup> *Id.* at 1124.

<sup>69</sup> 42 U.S.C. § 3601.

<sup>70</sup> *City of Oakland*, 972 F.3d at 1124.

<sup>71</sup> 42 U.S.C. § 3604.

<sup>72</sup> 114 CONG. REC. 3421, 3422 (Feb. 20, 1968).

<sup>73</sup> *City of Oakland*, 972 F.3d at 1124.

<sup>74</sup> *City of Oakland*, 972 F.3d at 1124 (citing *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 2011-12 (1972)).

<sup>75</sup> *Trafficante*, 409 U.S. at 209, 211-12.

<sup>76</sup> *Id.* at 210.

<sup>77</sup> *Id.* at 211.

their own behalf but also as private attorneys general in vindicating a policy that Congress considered to be of the highest priority.”<sup>78</sup>

The Ninth Circuit’s review of the congressional record suggested a strong preference for broad interpretation of the FHA, including the impact of discriminatory housing practices on cities.<sup>79</sup> The court quoted senator Brooke, one of the co-sponsors of the FHA, who called out cities’ roles in fighting the fallout from segregation as they “find themselves less and less able to cope with their problems.”<sup>80</sup> Senator Mondale, the principal author of the FHA, “specifically and repeatedly referenced cities’ ‘declining tax base’ as one of the large-scale injuries that the FHA was designed to mitigate.”<sup>81</sup> The Ninth Circuit thus found Congress’s intended interpretation of the FHA to be “broad and inclusive enough to encompass less direct, aggregate, and city-wide injuries.”<sup>82</sup>

## 2. Administrative Feasibility

The court cites *Holmes v. Securities Investor Protection Corporation* for the administrative feasibility prong, and acknowledges that this prong is critical to determining if an alleged harm holds “some direct relation” between the injury asserted and the injurious conduct alleged.<sup>83</sup> In *Holmes*, the Securities Investor Protection Corporation (SIPC) alleged that Holmes had conspired in a fraudulent stock manipulation scheme that disabled SIPC’s ability to meet obligations to its customers.<sup>84</sup> The Court held that proximate cause was required, insisting on a direct relationship between conduct alleged and harm asserted.<sup>85</sup>

The Ninth Circuit recognized three factors laid out by the *Holmes* Court: (1) whether the violation caused a plaintiff’s injuries, as opposed to other independent factors; (2) whether it is possible to clearly identify each plaintiff’s injuries to avoid multiple recoveries; and (3) “whether

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<sup>78</sup> *City of Oakland*, 972 F.3d at 1124 (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 211-12 (1972)). Per Cal. Civ. Pro. § 1021.5, private attorneys general who successfully defend an important right affecting the public interest will be awarded attorneys’ fees.

<sup>79</sup> *City of Oakland*, 972 F.3d at 1127 (quoting *N. Haven Bd. Of Educ. v. Bell*, 456 U.S. 512, 526-527 (1982) (explaining that “remarks. . .of the sponsor of the language ultimately enacted[ ] are an authoritative guide to the statute’s construction”) (also quoting *Fed. Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976) (“As a statement of one of the legislation’s sponsors, this explanation deserves to be accorded substantial weight in interpreting the statute”)).

<sup>80</sup> *City of Oakland*, 972 F.3d at 1124 (citing 114 CONG. REC. 2988 (Feb. 20, 1968)).

<sup>81</sup> *Id.* at 1126 (citing 114 CONG. REC. 2274 (Feb. 20, 1968)).

<sup>82</sup> *Id.* at 1124.

<sup>83</sup> *Id.* at 1128 (quoting *Holmes v. Sec. Inv’r. Prot. Corp.* 503 U.S. 258, 268 (1992)).

<sup>84</sup> *Holmes*, 503 U.S. at 269.

<sup>85</sup> *Id.* at 268.

allowing recovery for the indirect injury is unjustified by the general interest in deterring injurious conduct.”<sup>86</sup>

First, the court held that Oakland plausibly alleged that its regression analyses are capable of illustrating exactly which injuries are attributable to Wells Fargo’s conduct.<sup>87</sup> The court held these analyses were sufficient to “calculate exactly which lost property-tax revenues are attributable to Wells Fargo’s wrongdoing.”<sup>88</sup> The court was satisfied that the analyses would be “sophisticated, reliable, and scientifically rigorous” enough to allow a case to proceed.<sup>89</sup>

Second, there would be no duplication of recoveries because Oakland and individual borrowers are seeking different claims.<sup>90</sup> Oakland alone can pursue recovery for city-wide injuries, while only the individual borrowers can seek redress for their actual injuries.<sup>91</sup> The city is the only viable party that can claim injury due to reduced property-tax rates or increased municipal expenses.<sup>92</sup>

Thirdly, the court found that Wells Fargo’s alleged practices harm “different parties in different ways.”<sup>93</sup> The injury claimed by Oakland is entirely different than that of a person suing for his or her individual injuries and thus the parties would not be competing for the same recovery.<sup>94</sup> The court held that all three *Holmes* factors were satisfied and that it would be administratively feasible for the district court to administer Oakland’s injuries.<sup>95</sup>

#### B. THE APPLICATION OF THE PROXIMATE CAUSE STANDARD TO OAKLAND’S CLAIMS

The Ninth Circuit held that Oakland’s claim for reduced property-tax revenues as stated in the complaint satisfied the FHA’s proximate cause requirement, but its claim for increased municipal expenses did not.<sup>96</sup> While the injury is not directly related, the court held that it was closely related to the FHA-prohibited conduct.<sup>97</sup>

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<sup>86</sup> *City of Oakland*, 972 F.3d at 1123 (quoting *Holmes*, 503 U.S. at 269-70) (internal quotation marks omitted).

<sup>87</sup> *City of Oakland*, 972 F.3d at 1128.

<sup>88</sup> *Id.* at 1128.

<sup>89</sup> *Id.* at 1128-29.

<sup>90</sup> *Id.* at 1129.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 1130.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

Wells Fargo incorrectly claimed that a plaintiff must always allege an injury that is the “immediate result” of a violation.<sup>98</sup> In *Lexmark*, the Supreme Court unanimously held that while it is the “general tendency” to not go beyond the first step, if an “intervening link of injury” is found, then a party may be granted an opportunity to prove proximate cause.<sup>99</sup> Consequently, the Ninth Circuit acknowledged that if the Supreme Court meant for the “first step” analysis to preclude *all* intervening steps in proximate cause analyses, it would not have deferred to the lower courts.<sup>100</sup>

The Supreme Court has repeatedly held that the FHA protects indirectly injured parties.<sup>101</sup> The Court’s analysis of *Lexmark* allows for a wider inclusion of proximate cause, holding that if intervening steps did not result in discontinuity, they might not break the causal chain.<sup>102</sup> The court held that these cases established proximate-cause principles based on continuity that directly apply here.<sup>103</sup> The court held that if Oakland’s regression analyses successfully show that its injury was sufficiently isolated from the injuries of the individual borrowers, yet flows continuously from Wells Fargo’s conduct, the same principles from the non-FHA cases would apply.<sup>104</sup>

In *Lexmark*, an antitrust case, the Court relied on the Lanham Act that “permitted ‘any person who believes that he or she is likely to be damaged by a defendant’s false advertising’ to sue.”<sup>105</sup> Static Control alleged that the false advertising by a printer cartridge manufacturer led to customers not using Static Control’s product, which resulted in a loss of business.<sup>106</sup> The Court held that the harm alleged was “sufficiently close” to the prohibited conduct such that Static Control could plead its

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<sup>98</sup> *Id.*

<sup>99</sup> *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 140 (2014).

<sup>100</sup> *City of Oakland*, 972 F.3d at 1131; *see also Miami I*, 137 S. Ct. at 1306.

<sup>101</sup> *City of Oakland*, 972 F.3d at 1131; *see, e.g.*, *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 100-09 (1979) (holding a municipality had standing to sue realtors for discrimination, despite no direct discrimination against the municipality); *Trafficante*, 409 U.S. at 212 (holding that tenants may sue landlord for discriminating against prospective tenants, despite not suffering discrimination personally); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982) (permitting an organization for fair housing to sue for harm against itself and its members).

<sup>102</sup> *City of Oakland*, 972 F.3d at 1131-2 (citing *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 121, 134 (2014) (holding that printer and cartridge company who misled customers was still responsible to the indirectly impacted cartridge-refurbishing company); *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 653-58 (2008) (holding that auction bidders had standing to sue co-bidders who filed fraudulent paperwork which increased the co-bidders’ chance of winning the auction).

<sup>103</sup> *City of Oakland*, 972 F.3d at 1132.

<sup>104</sup> *Id.* at 1132-33.

<sup>105</sup> *Miami I*, 137 S. Ct. at 1306 (quoting *Lexmark*, 572 U.S. at 134).

<sup>106</sup> *Lexmark*, 572 U.S. at 122-23 (2014).

case.<sup>107</sup> As under *Iqbal*, the Court would allow parties to bring cases based on plausible claims that their evidence would be found to prove proximate cause.<sup>108</sup>

Wells Fargo attempted to distinguish *Lexmark* from its application here because the number of individual borrowers in this case who can seek damages on their own exceeds that in *Lexmark*.<sup>109</sup> However, the court noted that individual borrowers frequently lack the resources to sue, and will also often be time-barred, as the consequences of predatory lending oftentimes surface after the statute of limitations has run out.<sup>110</sup> The court pointed out that individual borrowers who have not yet suffered the consequences of predatory lending might not realize the coming danger of foreclosure, something that a city is in a better position to observe.<sup>111</sup>

The court held that Oakland's alleged injury—its decrease in property-tax revenues—was directly and continuously related to Wells Fargo's discriminatory lending practices.<sup>112</sup> Conversely, the same cannot be said of Oakland's claim regarding increased municipal expenses.<sup>113</sup> The court held that Oakland did not properly demonstrate which increases in its municipal expenses were attributable to Wells Fargo's allegedly predatory conduct.<sup>114</sup>

### III. IMPLICATIONS OF THIS DECISION

As the Supreme Court instructed in *Miami I*,<sup>115</sup> the Ninth Circuit analyzed proximate cause in relation to this distinct case.<sup>116</sup> The text and legislative history of the FHA have established a clear preference for a broad interpretation as to who qualifies to sue as an “aggrieved person,” providing a wide berth for showing causal connection.<sup>117</sup> Through this decision, the Ninth Circuit attempts to widen that berth.<sup>118</sup> By holding that cities have standing to sue for injuries directly and continuously re-

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<sup>107</sup> *Id.* at 133.

<sup>108</sup> “While legal conclusions can provide the complaint’s framework, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009).

<sup>109</sup> *City of Oakland*, 972 F.3d at 1133.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 1135.

<sup>113</sup> *Id.* at 1136.

<sup>114</sup> *Id.*

<sup>115</sup> *Miami I*, 137 S. Ct. at 1306.

<sup>116</sup> *City of Oakland*, 972 F.3d at 1122-36.

<sup>117</sup> *Id.* at 1124.

<sup>118</sup> See generally *City of Oakland v. Wells Fargo & Co.*, 972 F.3d 1112 (9th Cir. 2020).

lated to FHA violations, the Ninth Circuit has extended the opportunity for relief to parties who would not otherwise have a cause of action. By extending the proximate cause relationship past the “first step,” the court held that cities—likely in a better position to sue than individual borrowers—have the proper judicial means to thwart predatory lending.

#### CONCLUSION

While predatory practices by banks have been responsible for much of the discrimination and segregation in American cities, the Ninth Circuit’s holding provides a way for cities to hold the banks accountable. As banks are held liable for their predatory practices, they will likely change their lending methods. When minorities are no longer unfairly targeted through predatory lending, at least part of the Fair Housing Act will have accomplished its goal, realizing some of the potential and vision of Dr. Martin Luther King’s dream: “I have a dream that one day this nation will rise up and live out the true meaning of its creed: ‘We hold these truths to be self-evident, that all men are created equal.’”<sup>119</sup>

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<sup>119</sup> Martin Luther King, “*I Have a Dream*” Address Delivered at the March on Washington for Jobs and Freedom, STANFORD: THE MARTIN LUTHER KING, JR. RESEARCH AND EDUCATION INSTITUTE (Aug. 28, 1963), <https://kinginstitute.stanford.edu/king-papers/documents/i-have-dream-address-delivered-march-washington-jobs-and-freedom>.

