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Why Few Cities Will Take the Supreme Court Up on Their Right to Sue Banks.

Last week's ruling leaves open a key legal question that could make cities unlikely to file suit.

After losing billions in property tax revenue during the foreclosure crisis, local governments notched a win last week when the U.S. Supreme Court affirmed the city of Miami's right to sue big banks under the Fair Housing Act.

But don't expect a flood of lawsuits to follow any time soon. The ruling leaves open a key legal question about the burden of proof cities must present to show they were financially harmed.

In the 5-3 ruling, the court sided with Miami, agreeing that the 1968 act, which prohibits racial discrimination in the lease, sale and financing of property, applied to cities as well as people. But the ruling didn't agree that Miami had provided enough direct evidence linking discriminatory lending practices by Wells Fargo and Bank of America to the financial harms incurred by the city. It also stopped short of saying what a city must do to prove economic harm and remanded the case back to the lower court to answer that question.

"So what it leaves open right now is, can cities who brought this kind of case establish the kind of proximate cause the court has flagged in this decision?" says Joe Rich, a fair housing expert for the Lawyers' Committee for Civil Rights Under Law.

Proximate cause is essentially an event that sets in motion a sequence of events that result in a foreseeable effect, such as an injury, which would not otherwise have occurred. Last week's ruling said Miami would have to prove the banks' practices had a "direct" effect on its finances.

In its complaint, Miami had alleged that Wells Fargo and Bank of America intentionally targeted African-American and Latino neighborhoods for predatory practices by lending to them on worse terms than non-minority borrowers. The banks also failed to extend fair refinancing and loan modifications to those borrowers, the city said, which resulted in a high rate of defaults.

The conduct, according to Miami's complaint, led to a disproportionate number of foreclosures and vacancies in majority-minority neighborhoods. By late 2013, when the suit was filed, Miami had the highest foreclosure rate among the 20 largest metro areas in the country. According to the complaint, loans in majority-minority neighborhoods were nearly six times as likely to result in foreclosure as loans in majority white neighborhoods.

The ensuing crisis not only cut the city's property tax revenue, it strained Miami's limited resources by creating an increased demand for public safety services in those neighborhoods. An amicus brief filed by the Miami Fraternal Order of the Police (FOP) listed dozens of horrors that played out in these semi-abandoned neighborhoods. Foreclosed homes were used to hide dead bodies and to advertise child sex trafficking, for instance. In one heartbreaking case, a toddler drowned in the swimming pool of his neighbor's vacant house. The FOP even alleged that untended pools in

foreclosed homes became breeding grounds for swarms of mosquitos and “created the epicenter for America’s first Zika outbreak.”

It will be up to the federal appeals court in Atlanta to decide if Miami has shown proximate cause. But the ambiguity of the High Court’s ruling, plus the three-year statute of limitations on fair housing lawsuits, makes it unlikely that a slew of localities will use the decision as a license to start suing big banks. There are, however, a number of open cases in places like Los Angeles; Oakland, Calif.; and Providence, R.I., that benefit from the ruling.

Civil rights advocates say the decision is an important win in terms of enforcing the Fair Housing Act. Individuals have been successful at bringing cases against lenders following the foreclosure crisis. But governments have struggled: No case has gone to trial and there has just been one major settlement — a \$175 million payment by Wells Fargo to several cities and borrowers across the country.

Ajmel Quereshi, senior counsel for the NAACP Legal Defense and Educational Fund, hopes the ruling will “act as a future deterrent to banks that are thinking about these practices in the future.”

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