

A HOUSE BUILT ON SHIFTING SANDS: STANDING UNDER THE FAIR HOUSING ACT AFTER *THOMPSON V. NORTH AMERICAN STAINLESS*

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INTRODUCTION

The “central purpose” of the Fair Housing Act, according to the Supreme Court, is to “eradicate discriminatory practices” in the housing sector.¹ The statute enables suit from “an aggrieved person.”² For decades, this meant that a suit could be brought by any plaintiff that claimed to have met the constitutional standing requirements, namely, “injury-in-fact.”³ In a recent case interpreting a different statutory provision, *Thompson v. North American Stainless*, the Supreme Court called this doctrine into question, signaling that the pool of eligible plaintiffs could be considerably narrowed in the future.⁴ Since that decision, lower courts have been sharply divided as to whether the Supreme Court effectively overruled Fair Housing Act standing doctrine.⁵ In *Bank of America v. City of Miami*, the Supreme Court

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1. *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2511 (2015).

2. 42 U.S.C. § 3613(a)(1)(A) (1988).

3. *Trafficante v. Metro. Life Ins.*, 409 U.S. 205, 209 (1972); *see also* *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (explaining injury-in-fact as “an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent rather than conjectural or hypothetical”).

4. *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170 (2011).

5. *Compare, e.g., Cty. of Cook v. Wells Fargo*, 115 F. Supp. 39, 909, 917–18 (N.D. Ill. 2015) (holding that *Thompson* effectively overruled past Supreme Court interpretation of FHA statutory standing), *with, e.g., City of L.A. v. JP Morgan Chase & Co.*, No. 2:14-cv-04168-ODW (RZx), 2014 WL 6453808, at *6 (C.D. Cal. Nov. 14, 2014) (holding original interpretation of FHA statutory standing remained good law).

must decide whether to reconcile the interpretations of these statutory provisions or to retain the traditional broad conferral of standing under the Fair Housing Act. This commentary recommends that the Court reconcile these statutory provisions and cut back on the traditional broad conferral of standing. However, this commentary argues that the City of Miami still has standing to bring its claim under that narrower conferral.

I. FACTS

On December 13, 2013, the City of Miami, Florida (“the City”) brought suit against Wells Fargo, Citigroup, and Bank of America (“the Banks”)⁶ under the Fair Housing Act (“FHA”).⁷ The City alleged that since 2004, the Banks have continually flooded “minority communities with high cost and other ‘predatory’ loans, allegedly constituting ‘reverse redlining.’”⁸ Further, the City alleged that this practice “caused an excessive and disproportionately high number of foreclosures on [the Banks’] loans in the minority neighborhoods of Miami.”⁹ The City sought an injunction, a declaratory judgment, attorneys’ fees, punitive damages,¹⁰ and damages for the:

significant, direct, and continuing financial harm to the City . . . based on reduced property tax revenues based on: (a) the decreased value of the vacant properties themselves; and (b) the decreased value of properties surrounding the vacant properties . . . [and] damages based on the expenditures of municipal services that have been and will be required to remedy the blight and unsafe and dangerous conditions which exist at vacant properties that were foreclosed as a result of [the Banks’] illegal lending practices.¹¹

6. Although the cases were substantially similar, they were all brought separately. See *City of Miami v. Bank of Am. Corp.* (*Bank of America*), 800 F.3d 1262, 1263 n.1 (11th Cir. 2015). They were resolved in the same way by both the District and Appellate courts, have been consolidated and will be heard together by the Supreme Court. See *Bank of Am. Corp. v. City of Miami*, (*Bank of Am. Corp.*) 136 S. Ct. 2544 (2016), *cert. granted* 84 U.S.L.W. 3509 (U.S. June 28, 2016) (No. 15-1111).

7. *City of Miami v. Bank of Am. Corp.* (*Miami I*), No. 13-24506-CIV., 2014 WL 3362348 at *6-7 (S.D. Fl. July 9, 2014). The City also brought an unjust enrichment claim, which was dismissed without prejudice. *Id.* This claim, however, was not brought up on appeal and is outside the scope of this commentary.

8. *Id.* at 1; see also *id.* at 3 (“Reverse redlining is the practice of extending mortgage credit on exploitive terms to minority borrowers.”).

9. *Id.*

10. *Bank of America*, 800 F.3d at 1269.

11. *Miami I*, 2014 WL 3362348 at *2.

To buttress its claims, the City attached a statistical analysis and statements from confidential witnesses;¹² the City’s hedonic regression analysis allegedly could quantify those losses attributable to each individual bank’s conduct.¹³ This analysis purported to show, for example, “that an African-American [Bank of America] borrower was 1.581 times more likely to receive a predatory loan than a white borrower, and a Latino borrower was 2.807 times more likely to receive such a loan.”¹⁴ The confidential witness statements claimed that the Banks deliberately targeted black and Latino borrowers for predatory loans.¹⁵

The district court dismissed the City’s claim with prejudice for failure to state a claim under the Federal Rules of Civil Procedure 12(b)(6).¹⁶ The court reasoned that the City did not have statutory standing under the Fair Housing Act and that the Banks’ conduct did not proximately cause the City’s injuries.¹⁷ The court further reasoned that the City’s claim did not fall under the “zone of interests” protected by the Fair Housing Act.¹⁸ The court relied on Eleventh Circuit precedent, *Nasser v. City of Homewood*,¹⁹ which limited standing under the Fair Housing Act to those plaintiffs that “possess ‘rights granted’ by the Fair Housing Act,”²⁰ specifically, plaintiffs that plead damages that are “somehow affected by a racial interest.”²¹

The City moved for reconsideration and for leave to file an amended complaint, arguing that it had standing under the FHA.²² The proposed amended complaint alleged that the Banks’ discriminatory lending practices “frustrate[] the City’s longstanding and active interest in promoting fair housing and securing the benefits of an integrated community,” thereby “directly interfer[ing]” with one of the City’s missions.²³ It also made more detailed allegations about properties that had been foreclosed upon after being subject to discriminatory loans.²⁴

12. *Id.*

13. *Bank of America*, 800 F.3d at 1269.

14. *Id.* at 1268.

15. *Id.* at 1269.

16. *Miami I*, 2014 WL 3362348 at *3. The district court also dismissed the action on proximate cause and statute of limitations grounds. *Id.* at *6.

17. *Id.* at *3, 5.

18. *Id.* at *3–4.

19. 671 F.2d 432, 437 (11th Cir. 1982).

20. *Miami I*, 2014 WL 3362348 at *3–4.

21. *Id.*

22. *Bank of America*, 800 F.3d at 1271.

23. *Id.* (quoting First Amended Complaint at 31, *Miami I*, 2014 WL 3362348).

24. *Id.*

The district court denied the City’s motion for reconsideration and for leave to amend.²⁵ The court was unpersuaded by the City’s new argument that it “has a generalized non-economic interest . . . in racial diversity,” ruling that these were “claims [the City] never made and amendments it did not previously raise or offer despite ample opportunity,” and were therefore “improperly raised as grounds for reconsideration.”²⁶ Finally, the court noted that these “generalized allegations [do not] appear to be connected in any meaningful way to the purported loss of tax revenue and increase in municipal expenses allegedly caused by Defendants’ lending practices.”²⁷

II. LEGAL BACKGROUND

Congress enacted the FHA “to eradicate discriminatory practices” in the real estate market.²⁸ “Recognizing that persistent racial segregation had left predominantly black inner cities surrounded by mostly white suburbs, the Act address[ed] the denial of housing opportunities on the basis of race, color, religion, or national origin.”²⁹

The FHA provides that “[a]n aggrieved person may commence a civil action . . . to obtain appropriate relief with respect to [] discriminatory housing practice[s] or breach.”³⁰ It defines an “aggrieved person” as anyone who “claims to have been injured by a discriminatory housing practice,” or “believes that such person will be injured by a discriminatory housing practice that is about to occur.”³¹

Whether a plaintiff can bring suit under such a statutory cause of action involves a two-pronged analysis: the plaintiff must have both constitutional and statutory standing. The first prong, constitutional standing, is a mandatory inquiry in all federal court cases and determines if a court has the power to adjudicate a case.³² The Article III injury requirement is merely “an injury in fact that is concrete, particularized, and actual or imminent.”³³ The second prong, statutory

25. *Id.*

26. *Id.* (quoting *City of Miami v. Bank of Am. Corp.*, (*Miami II*) No. 13-24506-CIV., 2014 WL 4441368, at *2 (Sept. 8, 2014)).

27. *Id.* (quoting *Miami II*, 2014 WL 4441368 at *2 n.1).

28. *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2511 (2015).

29. *Id.* at 2510.

30. 42 U.S.C. § 3613(a)(1)(A).

31. *Id.* at § 3602(i).

32. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

33. *Id.* at 555 (internal quotation marks omitted); *see generally id.* at 562–71 (noting that constitutional standing also requires causation and redressability, neither of which are at issue

standing, exists if a plaintiff “falls within the ‘zone of interests’ sought to be protected by the statutory provision whose violation forms the legal basis for his complaint.”³⁴ Statutory standing analysis is actually a determination of whether a cause of action for the plaintiff exists under the statute.³⁵ The “zone of interests” requirement applies to all statutory causes of action.³⁶ The breadth of the “zone of interests,” however, varies by statute, as Congress can expand the scope of the zone if it does so expressly.³⁷

The Supreme Court’s early cases on the issue construed FHA standing as broadly as possible under Article III. First, in *Trafficante v. Metropolitan Life Insurance*,³⁸ a black tenant and a white tenant of a single apartment complex sued their landlord for racial discrimination in renting practice, alleging damage from loss of “the social benefits of living in an integrated community.”³⁹ The Court held that this injury was sufficient for standing, because “[FHA standing is] as broad[] as is permitted by Article III of the Constitution . . . insofar as tenants of the same housing unit that is charged with discrimination are concerned.”⁴⁰ Later, in *Gladstone Realtors v. Village of Bellwood*,⁴¹ the Village of Bellwood brought suit under the FHA against two real estate firms, alleging the firms “steered” black and white homeowners into targeted, race-specific neighborhoods, thereby “manipulat[ing] the housing market,” “affecting the village’s racial composition,” and causing “[a] significant reduction in property values.”⁴² The Court held that “[i]f, as alleged, petitioners’ sales practices actually have begun to rob Bellwood of its racial balance and stability, the village has standing to challenge the legality of that conduct.”⁴³ Further, the Court held that “[t]here can be no question about the importance’ to a community of ‘promoting stable, racially integrated housing.’”⁴⁴ The Court also reaffirmed that FHA statutory standing “is as broad as is permitted by

here).

34. *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 177–78 (2011) (citing *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 883 (1990)).

35. *City of Miami v. Bank of Am. Corp.*, 800 F.3d 1262, 1276 (2015); *Lexmark Int. v. Static Control Components*, 134 S. Ct. 1377, 1386–87, 1387 n.4 (2014).

36. *Lexmark*, 134 S. Ct. at 1388.

37. *Id.*

38. 409 U.S. 205 (1972).

39. *Id.* at 208.

40. *Id.* at 209.

41. 441 U.S. 91 (1979).

42. *Id.* at 109–10.

43. *Id.* at 110–11.

44. *Id.* at 111 (quoting *Linmark Assocs., Inc. v. Willingboro Tp.*, 431 U.S. 85, 94, 97 (1977)).

Article III of the Constitution.”⁴⁵ Three years later, in *Havens Realty Corp. v. Coleman*,⁴⁶ a nonprofit organization brought suit against a realty firm for racial steering.⁴⁷ The Court reaffirmed that standing reaches to the extent of Article III and held that the organization’s claim that racial steering “perceptibly impaired [its] ability to provide counseling and referral services for low-and moderate-income homeseekers” constituted injury-in-fact and, therefore, was sufficient for standing.⁴⁸ Congress revisited and amended the FHA in 1988.⁴⁹ The amended bill adopts substantially similar empowering language to, according to the House Report, “reaffirm the broad holdings of *Gladstone* and *Havens*.”⁵⁰

In a 2011 Title VII case, *Thompson v. North American Stainless*,⁵¹ the Supreme Court called into question the broad language in *Trafficante*, *Gladstone*, and *Havens*. In *Thompson*, a recently terminated employee brought suit under Title VII alleging that he was terminated in retaliation after his fiancée, who worked for the same employer, filed a gender discrimination charge against the employer.⁵² The employee argued that Title VII allowed suit in the same way the FHA did.⁵³ The Court had earlier connected Title VII and the FHA in *Trafficante*, where it supported its FHA holding by referencing the broad interpretation the Third Circuit had given to the similar empowering language in Title VII.⁵⁴ In *Thompson*, however, the Court renounced this broad interpretation of Title VII as inviting “absurd consequences.”⁵⁵ Instead, the Court determined that Title VII’s “zone of interests” is consistent with the longstanding interpretation of another statute with similar “aggrieved” language—the Administrative

45. *Id.* at 109.

46. 455 U.S. 363 (1982).

47. *Id.* at 368.

48. *Id.* at 372, 379.

49. 42 U.S.C. § 3601.

50. H.R. REP. NO. 100-711, 100th Cong., 2d Sess., at 17 (1988).

51. 562 U.S. 170 (2011).

52. *Id.* at 170.

53. *Id.* at 176.

54. *Id.*; compare Fair Housing Act, 42 U.S.C. § 3613(a)(1)(A) (authorizing suit from “an aggrieved person.”) with Title VII, 42 U.S.C. § 2000e-5(f)(1) (2012) (“A civil action may be brought . . . by the person claiming to be aggrieved . . .”). See also *Trafficante v. Metro. Life Ins.*, 409 U.S. 205, 209 (1972) (explaining that Title VII shows “a congressional intention to define standing as broadly as is permitted by Article III of the Constitution”).

55. *Thompson*, 562 U.S. at 176–77 (“For example, a shareholder would be able to sue a company for firing a valuable employee for racially discriminatory reasons, so long as he could show that the value of his stock decreased as a consequence.”).

Procedure Act (APA),⁵⁶ holding that both statutes enable suit by any plaintiff with an interest “arguably [sought] to be protected by the statute,” while excluding “plaintiffs who might technically be injured in an Article III sense but whose interests are unrelated to the statutory prohibitions in Title VII.”⁵⁷ Under this analysis, a suit cannot stand “if the plaintiff’s interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.”⁵⁸ The Court held that Title VII covered Thompson’s suit, as “the purpose of Title VII is to protect employees from their employers’ unlawful actions . . . [and] Thompson is not an accidental victim of the retaliation[;] . . . hurting him was the unlawful act by which the employer punished [his fiancée].”⁵⁹

The Court further reinforced the connection between Title VII and FHA standing, discussing that the holdings of *Trafficante*, *Gladstone*, and *Havens* also did not require standing at its utmost extent, because the injuries to the plaintiffs in those cases fell within the “zone of interests” as construed under the APA.⁶⁰ Additionally, the Court reinforced this connection by declining to follow a suggested interpretation of the standing requirement in Title VII on the grounds that such an interpretation would contradict the *Trafficante* holding.⁶¹ This connection could signal that the Court is ready to apply the *Thompson* analysis to the FHA and restrict FHA standing to a narrower “zone of interests” inquiry.

III. HOLDING

The Eleventh Circuit reversed the District Court’s dismissal, “[b]ecause the district court imposed too stringent a zone of interests test and wrongly applied the proximate cause analysis[.]”⁶² Instead, the Eleventh Circuit “[f]ound] that the City has constitutional standing to pursue its FHA claims” and that “the ‘zone of interests’ for the Fair

56. Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* (2012); compare 5 U.S.C. § 702, (authorizing suit by any “person . . . adversely affected or aggrieved . . . within the meaning of a relevant statute”) with 42 U.S.C. § 2000e-5(f)(1) (“A civil action can be brought . . . by the person claiming to be aggrieved.”).

57. *Thompson*, 562 U.S. at 175–78 (quoting *Nat’l Credit Union Admin. v. First Nat. Bank & Trust Co.*, 522 U.S. 479, 495 (1998)).

58. *Id.* at 178 (quoting *Clarke v. Secs. Indus. Ass’n.*, 479 U.S. 388, 399–400 (1987)).

59. *Id.*

60. *Id.* at 176.

61. *Id.* at 177.

62. *City of Miami v. Bank of Am. Corp.*, 800 F.3d 1262, 1267 (2015).

Housing Act extends as broadly as permitted under Article III of the Constitution, and therefore encompasses the City’s claim.”⁶³ Finally, it allowed the City to remedy its statute of limitations issues by amending its original complaint.⁶⁴ The court declined, however, to evaluate the amended complaint without first giving the district court the opportunity to do so.⁶⁵

IV. ARGUMENTS

A. *Petitioner’s Arguments*

Petitioners, the Banks, argue that the Fair Housing Act, like Title VII under *Thompson*, imposes greater restrictions than Article III injury-in-fact alone, and instead only enables suit by plaintiffs that fall within its “zone of interests.”⁶⁶ Further, the Banks argue that because of the similar language, timeframe, and purpose⁶⁷ of the statutes, the “zone of interests” implicated in each statute is similar,⁶⁸ and that, consistent with *Thompson*, the “zone of interests” test “enabl[es] suit by any Plaintiff with an interest arguably sought to be protected by the statute, while excluding Plaintiffs who might technically be injured in an Article III sense but whose interests are unrelated to the statutory prohibitions in Title VII.”⁶⁹

B. *Respondent’s Arguments*

Respondent, the City of Miami, concedes that after the Court’s *Thompson* analysis, statutory standing under the Fair Housing Act may not, as previously had been decided, “extend to the full limits of Article III,” yet argues that it does encompass the City’s claim in this case.⁷⁰ The City claims that its complaint, especially as amended, satisfies the

63. *Id.* at 1266. The court acknowledged the incongruence between the FHA precedent and *Thompson*, but was still bound by the FHA holdings without explicit Supreme Court decisions to the contrary. *Id.* at 1277.

64. *Id.* at 1284.

65. *Id.*

66. Brief for Petitioners at 12–13, *Bank of America Corp. v. City of Miami*, 136 S. Ct. 2544 (2007) (No. 15-1111) [hereinafter *Brief for Petitioners*].

67. *Tex. Dep’t of Hous. & Cmty. Aff. v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2511 (2015) (stating the purpose of both statutes is to “eradicate discriminatory practices within a sector of the Nation’s economy”).

68. *Brief for Petitioner*, *supra* note 66, at 13–15.

69. *Id.* at 14 (quoting *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 178 (2011)) (internal quotation marks omitted).

70. Brief of Respondent at 19–20, *Bank of Am. Corp.*, 136 S. Ct. 2544 (No. 15-1111) [hereinafter *Brief of Respondent*].

Petitioner’s test; it pleads sufficient injury to its “interest in non-discrimination.”⁷¹ Respondent further argues that the 1988 amendments to the Fair Housing Act codify the Court’s past precedent.⁷² Finally, Respondent argues that the *Thompson* holding does not necessarily limit the Fair Housing Act because the two statutes are different.⁷³

V. ANALYSIS

First, the Court should limit standing under the FHA so that it is coextensive with similar statutes. Second, the Court should hold that Respondent, the City of Miami, has standing under that standard.

A. *Standing Under the FHA Is Equivalent to Standing Under Title VII or the APA.*

An analysis of the Court’s reasoning in *Thompson* shows that the FHA’s empowering language should be construed the same way as Title VII. First, the Court has shown special willingness to interpret “aggrieved” language similarly across statutes. Second, in making that determination, the Court has been willing to overlook large differences in the underlying statutes. Third, the Court kept *Thompson* within FHA standing doctrine. And finally, the same rationale for limiting Title VII standing applies to the FHA.

The Court has shown special willingness to interpret “aggrieved” language similarly across statutes.⁷⁴ Despite the adage that “identical language may convey varying content when used in different statutes,”⁷⁵ the *Thompson* decision largely ignored the differences in Title VII and the APA.⁷⁶ Instead, the Court relied primarily on the statutes’ similar language.⁷⁷ Here, it is likely that the Court will analyze the “aggrieved” language similarly under the FHA.

71. *Brief of Respondent, supra* note 70, at 21 (citing *Brief for Petitioners, supra* note 66, at 28).

72. *Id.* at 22–27.

73. *Id.* at 28.

74. *See supra* text accompanying notes 56, 60–61.

75. *Yates v. United States*, 135 S. Ct. 1074, 1082 (2015).

76. *Compare Wong Yang Sung v. McGrath*, 339 U.S. 33, 41 (1950) (“One purpose [of the Administrative Procedure Act] was to introduce greater uniformity of procedure and standardization of administrative practice among the diverse agencies whose customs had departed widely from each other.”) *with* *Tex. Dep’t of Hous. & Cmty. Aff. v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2521 (2015) (stating the purpose of Title VII was to eliminate discriminatory practices in employment).

77. *See Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 176–77 (2011).

Additionally, the Court's willingness to overlook the differences between the APA and Title VII in *Thompson* signifies that the differences between Title VII and the Fair Housing Act are not sufficient to justify varying the interpretation of the "zone of interests." Stated differently, the operative question is not: "how different are Title VII and the FHA?"⁷⁸ Instead, the question is: "is Title VII less different from the FHA than Title VII is from the APA?" The answer to this question is a resounding "yes." Both Title VII and the Fair Housing Act are provisions of the Civil Rights Act,⁷⁹ both have been amended relatively recently,⁸⁰ and both have the similar purpose of "eradicat[ing] discriminatory practices within a sector of the [n]ation's economy."⁸¹

Further, the Court's insistence on keeping the Title VII analysis from straying from past FHA holdings reveals intent to construe the statutes similarly. The Court could have avoided any connection between Title VII and FHA by merely stating: "we decline to follow the dicta in *Trafficante*, despite the similar empowering language of the statutes, both have different purposes, amendment history, etc." Its failure to do so suggests that the statutes are not sufficiently different to justify interpreting them differently.

Similarly, the Court must have meant for Title VII and the FHA to have the same "zone of interests" analysis, because otherwise it had no reason to go to such lengths in *Thompson* to assure that its determination of who constitutes a "person aggrieved" was "fully consistent with [its] application of the term in *Trafficante*."⁸² First, *Thompson* was a Title VII case; any discussion of the Fair Housing Act was therefore not determinative. Second, the Court could have merely determined that the analysis was not equivalent under the two statutes and avoided the unnecessary discussion altogether. That it did not do

78. Certainly, the statutes are different in important respects. For example, the Fair Housing Act states its purpose explicitly: "to provide, within constitutional limitations, for fair housing throughout the United States." See 42 U.S.C. § 3601. Title VII lacks such broad purpose language. See *id.* § 2000e-5(f)(1). One of the primary purposes of the 1988 FHA amendments was to strengthen the private enforcement mechanism of the statute, thus the amendments contain specific reference to the "broad holdings" of *Trafficante* and *Havens*. See H.R. REP. NO. 100-711, 100th Cong., 2d Sess., at 16 (1988). Title VII's 1991 amendments make no such reference to *Hackett v. McGuire Bros., Inc.*, 445 F.2d 442 (11th Cir. 1971), which referenced the broad holdings of Title VII and was cited in *Trafficante*.

79. *Thompson*, 562 U.S. at 176.

80. See 42 U.S.C. §§ 3601, 2000e-5(f)(1).

81. *Tex. Dep't of Hous. & Cmty. Aff.*, 135 S. Ct. at 2511.

82. See *Thompson*, 562 U.S. at 177.

this shows that its language served a different purpose—to lay the groundwork for reading the “zone of interests” test into the FHA.

Finally, similar absurd consequences to those that concerned the Court in *Thompson* could follow if the FHA is interpreted to be as broad as Article III permits. For example, the Court discussed how it would be absurd if a shareholder were allowed to sue for diminution of stock value after a corporation violated Title VII. Similarly, if the FHA requires only broad constitutional standing, a shareholder would be allowed to sue a real estate firm for the diminution of its stock if it occurred as a result of the firm’s discriminatory renting practices.⁸³

B. The City Is Still Aggrieved Within the FHA Zone of Interests.

The “zone of interests” test is not stringent, and the Court has shown a willingness to allow suit in close cases. First, the Court only requires an injury that is *arguably* within the zone of interests “to indicate that the benefit of any doubt goes to the plaintiff.”⁸⁴ It bars suits only “if the plaintiff’s interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.”⁸⁵ Additionally, the Court may be inclined to view the scope of the “purposes implicit in the statute” broadly; for example, the Court has previously defined the purpose of Title VII as “eradicating discriminatory practices within [employment].”⁸⁶ In *Thompson*, however, while applying the test, the Court announced that “the purpose of Title VII is to protect employees from their employers’ unlawful actions.”⁸⁷ This change in formulation is important: the earlier formulation emphasizes the discrimination itself and therefore does not necessarily contain *Thompson*’s complaint, while the latter formulation does so unequivocally.

Finally, the conferral of standing in *Gladstone* provides a close analogy to how the Court should decide the present case. The Court in *Thompson* went to great lengths to ensure that the FHA holdings were

83. *See Thompson*, 562 U.S. at 177.

84. *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1389 (2014).

85. *Thompson*, 562 U.S. at 178 (quoting *Clarke v. Secs. Ind. Ass’n.*, 479 U.S. 388, 399 (1987)).

86. *Tex. Dep’t of Hous. & Cmty. Aff.*, 135 S. Ct. at 2511.

87. *Thompson*, 562 U.S. at 178.

consistent with the new “zone of interests” test.⁸⁸ So, the best place to look for an analogy is within those cases. In *Gladstone*, a municipality alleged that it:

had been injured by having its housing market wrongfully manipulated to the economic and social detriment of its citizens and that the individual respondents had been denied their right to select housing without regard to race and had been deprived of the social and professional benefits of living in an integrated society.⁸⁹

Both the municipality and the individual respondents were held to have standing. The Court held that “[i]f, as alleged, petitioners’ sales practices actually have begun to rob Bellwood of its racial balance and stability, the village has standing to challenge the legality of that conduct,”⁹⁰ and that “[t]here can be no question about the importance’ to a community of ‘promoting stable, racially integrated housing.’”⁹¹ The injuries to Bellwood and the City of Miami in this case are indistinguishable.⁹²

CONCLUSION

The Court should hold that the City has alleged injury within the Fair Housing Act’s “zone of interests” and allow the merits of the case to be heard.

88. *See id.* at 177.

89. *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 91 (1979).

90. *Id.* at 111.

91. *Id.* at 111 (quoting *Linmark Assocs., Inc. v. Willingboro Twp.*, 431 U.S. 85, 94 (1977)).

92. The Court could also remand the case, and allow the City leave to amend its complaint with greater information about how the discrimination itself has caused it injury.