No. 24-362

IN THE

Supreme Court of the United States

CURTRINA MARTIN, *ET AL.*,

Petitioners,

v.

UNITED STATES OF AMERICA, *ET AL.*,

Respondents.

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

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF PETITIONERS

SCOTT L. NELSON
Counsel of Record
ALLISON M. ZIEVE
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
snelson@citizen.org
Attorneys for Amicus Curiae

March 2025

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Pages**

Constitutional Provisions and Statutes

Other

INTEREST OF AMICUS CURIAE[1]

Amicus curiae Public Citizen is a nonprofit consumer advocacy organization that appears on behalf of its nationwide membership before Congress, administrative agencies, and courts on a wide range of issues. Public Citizen has a longstanding interest in preserving state-law remedies for personal injury against unwarranted claims of preemption by federal law under the Constitution's Supremacy Clause, and has frequently filed briefs in this Court and others addressing Supremacy Clause issues. Public Citizen submits this brief to address the Eleventh Circuit's holding that the Supremacy Clause preempts *federal*-law remedies by prohibiting the application of tort principles derived from state law, which Congress explicitly incorporated into federal law when it imposed tort liability on the United States under the Federal Tort Claims Act.

SUMMARY OF ARGUMENT

The Federal Tort Claims Act (FTCA) creates a federal right of action against the United States for torts committed by federal employees and waives sovereign immunity for claims that fall within the scope of that right of action. The FTCA provides that, with some exceptions, the United States shall be liable for torts to the same extent as a private person under similar circumstances. It does so by adopting as its standard for liability the principles of state tort law that would be applicable to a private person in the state where the allegedly tortious conduct occurred.

---

[1] This brief was not authored in whole or part by counsel for a party. No one other than amicus curiae made a monetary contribution to preparation or submission of the brief.

Under the FTCA, those state-law principles do not apply to claims against the United States by their own force, but because Congress enacted a statute mandating their application. To ensure that its chosen standard of liability would not adversely affect legitimate government interests, Congress also enacted a baker's dozen of exceptions excusing the United States from liability for injuries even if the conduct causing them would be tortious under state law if committed by a private person.

In this case, the Eleventh Circuit held that the Constitution's Supremacy Clause bars enforcement of the FTCA's requirement that the tort liability of the United States be based on principles borrowed from state tort law. According to the court of appeals, the Supremacy Clause prohibits imposition of tort liability on the United States under the FTCA if the tortious acts "have some nexus with furthering federal policy and can reasonably be characterized as complying with the full range of federal law." Pet. App. 11a (quoting *Kordash v. United States*, 51 F.4th 1289, 1293 (11th Cir. 2022), and *Denson v. United States*, 574 F.3d 1318, 1344 (11th Cir. 2009)).

That holding turns the Supremacy Clause upside-down. The Supremacy Clause, as this Court's decisions have explained, is fundamentally a choice-of-law provision, requiring courts to apply requirements of the Constitution and federal laws enacted in accordance with its provisions, notwithstanding purported commands of state law to the contrary. Here, a *federal* law—the FTCA—dictates that the United States be held liable in circumstances where a private person would be liable under state tort law. The Supremacy Clause therefore requires that the FTCA be treated as the supreme law of the land and binds judges to apply

the standard of liability the FTCA specifies. Moreover, the Supremacy Clause by its terms preempts a state law only to the extent that the state law provides something "contrary" to federal law. But when federal law explicitly borrows state-law principles to supply the federal rule of decision for courts to apply, the application of those principles is not "contrary" to federal law.

The court of appeals, however, held that courts cannot apply a federal statutory command that, in the court's view, is contrary to the purposes and objectives of federal law more generally. *See* Pet. App. 16a. At best, the court has identified an implied conflict between the FTCA's requirements and other supposed principles of federal law. But the Supremacy Clause has nothing to do with claimed conflicts among *federal* laws. Resolving tensions within the body of federal law is, as this Court has pointed out, an ordinary matter of federal statutory construction not governed by Supremacy Clause preemption principles. Thus, the answer to the first question presented by this case—whether the Supremacy Clause bars FTCA claims in the circumstances described by the court of appeals—is unequivocally no. The determinative issue in the case is therefore whether the claims at issue fall within an exception to the FTCA.

ARGUMENT

I. Liability under the FTCA is imposed by federal statute, not state law.

The Eleventh Circuit's erroneous invocation of the Supremacy Clause to restrict the application of federal statutory requirements rests on the mistaken premise that FTCA actions against the United States are "suits under state law against federal officials

carrying out their executive duties" and, therefore, must be policed under the implied conflict preemption doctrine to ensure that the "state-law liability" they may impose does not "stand[ ] as an obstacle to the accomplishment of the full purposes and objectives of Congress." *Kordash v. United States*, 51 F.4th at 1293 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). That understanding of the FTCA is flatly wrong.

An FTCA action is a suit under *federal law* that imposes *federal-law liability* through the application of rules of decision dictated by statutory provisions enacted by Congress. The FTCA does not waive the sovereign immunity of the United States against tort causes of action that exist independently of federal law. Rather, the FTCA itself imposes the liabilities that are subject to its waiver of sovereign immunity by providing that "[t]he United States shall be liable" in tort for actions of its officers, employees, and agencies. 28 U.S.C. § 2674. The FTCA also creates a federal cause of action and grants the federal courts exclusive jurisdiction to adjudicate actions asserting that cause of action. *See id.* § 1346(b). The statute specifies the prerequisites for bringing FTCA actions and the time in which they must be brought, *see id.* §§ 2675 & 2401; identifies the basic legal principles that govern such claims, *see id.* §§ 1346(b) & 2674; enumerates "exceptions" to liability that function as defenses, *see id.* § 2680; limits the remedies and attorney fees available when liability is found, *see id.* §§ 2674 & 2678; specifies the effect of a judgment in an FTCA action, *see id.* § 2676; and provides that the FTCA is the exclusive remedy for injuries resulting from governmental acts or omissions within its scope, *see id.* § 2679(b). In short, the United States is liable under the FTCA

only when and to the extent that Congress has imposed liability by statute.

The Eleventh Circuit's view that the FTCA nonetheless involves "suits under state law" and "state-law liability" reflects a misunderstanding of Congress's decision to borrow state-law tort principles to define the tort liability that the FTCA imposes. Specifically, the FTCA provides that the United States is liable in tort "in the same manner and to the same extent as a private individual under like circumstances," 28 U.S.C. § 2674—that is, it is liable "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." *Id.* § 1346(b); *see also id.* § 2672 (using same language to describe authority of federal agencies to settle tort claims).

That language, however, does not suggest that state law applies *of its own force* to the federal government in FTCA actions or that the resulting liability is liability *under state law*. To the contrary, state tort principles apply only because, and to the extent that, Congress has chosen to use them as the standard for the liability that the FTCA creates. Indeed, the state-law principles that Congress incorporated to determine the liability of the United States under the FTCA do so wholly without regard to whether they are applicable to the United States or any other governmental body under state law. For example, this Court long ago held that state tort defenses and other limitations on liability applicable to *government* defendants are not incorporated in the FTCA. *See United States v. Muniz*, 374 U.S. 150, 164–65 (1963); *Indian Towing Co. v. United States*, 350 U.S. 61, 65 (1955). Thus, the FTCA does not provide that the United

States is liable when state law says it (or government entities more generally) is liable, but instead that it is liable under circumstances *similar* to those in which state law *would* say that *someone else* (a private person) would be liable. 28 U.S.C. § 1346(b). The imposition of liability on the United States in such circumstances does not find its source in state law, but is entirely the creation of a federal statute.

Moreover, Congress adopted special defenses not otherwise available under state law to ensure that its choice of using state tort principles applicable to private actors does not impinge on federal governmental interests. *See* 28 U.S.C. § 2680; *Muniz*, 374 U.S. at 163 ("Congress has taken steps to protect the Government from liability that would seriously handicap efficient government operations."). Those defenses, where applicable, exclude liability for such things as the exercise of discretionary governmental functions, *id.* § 2680(a), negligent transmission of mail, *id.* § 2680(b), imposition of quarantines, *id.* § 2680(f); commission of certain intentional torts, *id.* § 2680(h); regulation of the monetary system, *id.* § 2680(i), and combat operations of the armed forces, *id.* § 2680(j). The statute also incorporates certain federal governmental immunities, *id.* § 2674 (third paragraph), and excludes constitutional torts and certain federal statutory claims, *id.* § 2679(b)(2). The result of this reticulated federal statutory scheme is a form of liability that no state purports to or could impose on the United States: namely, liability in circumstances *analogous* to those under which state law would recognize private tort liability, but subject to defenses and other procedural and substantive limitations designed by Congress to balance federal government interests

against the interest in providing recovery to persons injured by negligent or wrongful government actions.

Although this Court has occasionally referred in shorthand to FTCA actions against the United States as involving "state-law tort suits against the Federal Government," *Brownback v. King*, 592 U.S. 209, 210 (2021), its decisions have consistently recognized that the liability of the United States in such actions is grounded on federal law, in the form of a statute enacted by Congress. For example, in *FDIC v. Meyer*, 510 U.S. 471 (1994), the Court observed that, through the FTCA—and specifically through the language codified in 28 U.S.C. § 1346(b)—"the *United States* has … 'render[ed]' *itself* liable" for torts in circumstances in which state law would hold a private person liable. *Id.* at 477 (emphasis added; quoting *Richards v. United States*, 369 U.S. 1, 6 (1962)). The Court has explicitly recognized that "whether a private person would be responsible for similar negligence under the laws of the State where the acts occurred" is "the test established by the Tort Claims Act for determining the United States' liability." *Rayonier Inc. v. United States*, 352 U.S. 315, 319 (1957). The standard of liability "is controlled by a formal expression of the will of Congress," *Richards*, 369 U.S. at 7, which determines the scope of the "remedies provided by Congress," *Muniz*, 374 U.S. at 165–66. Thus, whether a private person would be liable for similar conduct under state tort law is one of the "elements" of the *federal* cause of action created by 28 U.S.C. § 1346(b). *Brownback*, 592 U.S. at 212; *see also id.* at 216 ("[O]ne element of an FTCA claim is that the plaintiff establish that the Government employee would be liable under state law.").

This Court's consistent readings of the FTCA confirm what is plain from the statutory language. State law itself does not impose liability under the FTCA. State-law principles that would apply to the liability of private persons are used as part of the determination of the liability of the United States only because a federal law duly enacted by Congress so requires.

II. The Supremacy Clause does not limit, but rather requires, application of federal law.

The Supremacy Clause dictates that federal laws enacted pursuant to the Constitution are the law of the land, and it resolves conflicts between the commands of federal laws and contrary state laws. The Clause thus compels adherence to the FTCA's directive that state-law principles that would apply to private tortfeasors form the basis of the federal government's tort liability. The application of those principles cannot be contrary to federal law when federal law expressly *requires* their application.

The Supremacy Clause provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the supreme Law of the Land; … any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2. The Supremacy Clause requires "preemption" of state laws where giving them effect would be in derogation of the supremacy of the Constitution or a valid federal law enacted under it—that is, where state law stands in contradiction to some applicable command of federal law. *See Murphy v. NCAA*, 584 U.S. 453, 477 (2018). All forms of preemption, in other words, involve "a clash between a constitutional exercise of Congress's legislative power and conflicting state law." *Murphy*, 584

U.S. at 479. Where such a clash occurs, the Supremacy Clause provides a "rule of decision": Courts must give effect to the federal law, not the conflicting state one. *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324 (2015).

More broadly, the Constitution's creation of a sovereign federal union under a government that, "within its own sphere," is "supreme" necessarily "exempt[s] [that government's] operations from [the] influence" of "power vested in subordinate governments." *McCulloch v. Maryland*, 17 U.S. 316, 427 (1819). That is, "the activities of the Federal Government are free from regulation by any state," *Mayo v. United States*, 319 U.S. 441, 445 (1943), because a "subordinate sovereign" cannot control the government of the United States without its consent, *Hancock v. Train*, 426 U.S. 167, 179 (1976). As this Court recently explained, "[t]he Constitution's Supremacy Clause generally immunizes the Federal Government from state laws that directly regulate or discriminate against it." *United States v. Washington*, 596 U.S. 832, 835 (2022).

Because preemption under the Supremacy Clause is always triggered by a clash between federal and state law, however, the Supremacy Clause allows even direct application of state regulations to the federal government if authorized by a federal statute. In that circumstance, state regulation is in conformity with, not contrary to, the laws of the United States. *See United States v. Washington*, 596 U.S. at 839–40. Likewise, not all differences between state law and federal law, or all impacts of state laws on federal government interests, give rise to preemption, because not all involve contradictory or conflicting federal and state commands. *See*, *e.g.*, *Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323 (2011); *Wyeth v. Levine*, 555

U.S. 555 (2009); *Sprietsma v. Mercury Marine*, 537 U.S. 51 (2002). And where a federal law authorizes or contemplates the operation of state law, the federal law does not displace state law because giving it effect, as the Supremacy Clause demands, requires that state law *not* be disturbed. Put another way, state laws are not "contrary" to federal laws that require or permit the state laws' operation.

Thus, as this Court has said time and again, "[t]he purpose of Congress is the ultimate touchstone" in determining the preemptive effects of federal law. *Retail Clerks Int'l Ass'n v. Schermerhorn*, 375 U.S. 96, 103 (1963); *see Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 162–63 (2016); *Wyeth*, 562 U.S. at 565. This proposition holds good in "every pre-emption case," *Hughes*, 578 U.S. at 163, "[w]hatever the category of preemption asserted"—be it express, implied, or field preemption. *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 785 (2019) (Ginsburg, J., concurring in the judgment).

It follows that, in the first instance, " '[e]vidence of pre-emptive purpose,' whether express or implied, must … be 'sought in the text and structure of the statute at issue.' " *Va. Uranium*, 587 U.S. at 778 (lead opinion of Gorsuch, J.) (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993)). Thus, a litigant claiming preemption based on conflict between state law and the requirements, purposes, or objectives of federal law "must point specifically to 'a constitutional text or a federal statute' that does the displacing or conflicts with state law." *Id.* at 767 (citation omitted). Courts considering such claims, moreover, must respect both "what Congress wrote" and "what it didn't write." *Id.* at 765. The inquiry turns on "what can be

found in the law itself," *id*. at 779, not on "abstract and unenacted legislative desires," *id*. at 778.

In light of these principles, courts must give effect to federal statutory provisions whose terms manifest an intent to allow application of state laws even when those laws might otherwise be impliedly preempted because of a conflict of some kind with federal law. *See*, *e.g.*, *Wyeth*, 555 U.S. at 575; *Silkwood v. Kerr-McGee Corp.,* 464 U.S. 238, 256 (1984). Disregard of such statutory provisions would violate the cardinal rule that preemption of whatever stripe—express preemption, implied field preemption, or implied conflict preemption—is *always* a matter of congressional intent discernible from statutory text and structure. *Va. Uranium*, 587 U.S. at 778 (lead opinion of Gorsuch, J.); *id*. at 785 (Ginsburg, J., concurring in the judgment). When a federal statute allows or requires state law to operate, effectuating the law enacted by Congress requires giving effect to its command that state laws remain operative. If a federal statute does not in some way require displacement of state law, such displacement cannot be necessary to ensure the federal statute's "supremacy."

Thus, the Court has repeatedly held that federal statutes may limit or foreclose the otherwise preemptive effects of federal law. *See*, *e.g.*, *Calif. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987); *Malone v. White Motor Corp.*, 435 U.S. 497 (1978); *Schermerhorn*, 375 U.S. 96. Such "*antipre-emption* provisions," as Justice Scalia labeled them, *Guerra*, 479 U.S. at 295 (Scalia, J., concurring in the judgment), are, like other federal statutory commands, the law of the land and must be given effect under the Supremacy Clause.

Indeed, the Supremacy Clause effectively allows Congress to *reverse* the ordinary rule that federal law preempts conflicting state law and to provide that state laws prevail in cases of conflict. For example, the Court has held that the McCarran-Ferguson Act, which provides that no federal statute "shall be construed to invalidate, impair, or supersede" state laws regulating the business of insurance, 15 U.S.C. § 1012(b), functions as a reverse-preemption provision: Where "there is a direct conflict between [a] federal … statute and [state] law," the "terms of the McCarran-Ferguson Act" provide that "federal law must yield." *Dep't of Treasury v. Fabe*, 508 U.S. 491, 502 (1993). Because the McCarran-Ferguson Act is a law of the United States enacted pursuant to the Constitution, the Supremacy Clause dictates that its requirement that state law prevail over otherwise applicable federal law must be given effect.

Application of these principles allows no room for the Eleventh Circuit's view that the Supremacy Clause overrides Congress's choice to impose liability on the United States in circumstances where state tort law would make a private person liable. Indeed, this case is easier from a Supremacy Clause standpoint than cases involving "anti-preemption" or "reverse preemption" statutory provisions because here, unlike in those cases, Congress is not simply permitting state law to operate of its own force in areas where it arguably comes into conflict with federal law. Rather, in enacting the FTCA, Congress unambiguously *prescribed* use of tort-law principles derived from state law as the *federal* rule of decision in cases arising under a federal statute. Where, as in this case, a "Law[ ] of the United States made in Pursuance" of the Constitution prescribes a standard of liability, the

Supremacy Clause makes that prescription "the supreme Law of the Land" and binds courts to follow it. U.S. Const., art. VI, cl. 2. Moreover, the application of that standard—even if it were being applied as the law of a state rather than as federal law—could not possibly be considered "contrary" to federal law when federal law requires its application. The assertion that a statute that *adopts* state laws as federal rules of decision manifests an intent to displace those laws is nonsensical.

To be sure, if a principle of state tort law were preempted or otherwise unconstitutional *as applied to private persons*, the FTCA would not mandate its application in a suit against the United States. That result, however, would not follow from the Supremacy Clause, but from the terms of the FTCA, which command that (subject to the exceptions set forth in the statute) courts hold the United States liable "to the same extent as a private individual under like circumstances." 28 U.S.C. § 2674. If a rule of state tort liability were unconstitutional as applied to private individuals, such individuals would not be liable under the circumstances addressed by that rule, and therefore the United States also could not be held liable in those circumstances by the FTCA's plain terms.

The court of appeals' application of the Supremacy Clause, however, is not based on any supposed constitutional infirmity in the application of relevant state tort-law principles to private individuals. Rather, it posits that tort-law principles *valid* as to private individuals may not, under the Supremacy Clause, be applied to the federal government because doing so would interfere with the lawful operation of the government. That view cannot be squared with the Supremacy Clause because it fails to give effect to a law

enacted by Congress, which the Supremacy Clause binds courts to treat as paramount.[2]

III. Supremacy Clause implied-preemption principles do not apply to asserted conflicts between or among federal laws.

The Eleventh Circuit's case law, in the guise of enforcing the Supremacy Clause, holds a federal statutory requirement unenforceable because of a perceived conflict with the purposes and objectives of other (unspecified) federal laws. Specifically, the court has held that imposing liability based on the state-law tort principles whose application is called for by the FTCA is prohibited when the activity in which federal employees were engaged when they committed the allegedly tortious acts that injured the plaintiffs has "some nexus with furthering federal policy and can reasonably be characterized as complying with the full range

---

[2] Taken seriously, the Eleventh Circuit's view that Supremacy Clause principles must be applied in FTCA cases as if state tort-law principles apply to claims against the United States of their own force would nullify the FTCA's standard of liability. Because states cannot unilaterally impose tort liability on the federal government, the FTCA operates only because the United States has the power to impose liability on itself based on state tort-law principles that could not otherwise be applied to the United States under the Supremacy Clause. Presumably, the Eleventh Circuit does not think that the FTCA's standard of liability is preempted in every case: It has continued to entertain some FTCA actions asserting claims that the United States is liable for conduct that would be actionable under state law if performed by a private person. *See*, *e.g.*, *Smith v. United States*, 7 F.4th 963 (11th Cir. 2021). The Eleventh Circuit's apparent view that the Supremacy Clause permits Congress to incorporate some otherwise preempted state tort-law principles into the FTCA but not others lacks a principled basis for distinguishing which state-law principles can permissibly be incorporated and which cannot.

of federal law." Pet. App. 11a. The Eleventh Circuit explicitly based this standard on this Court's "purposes and objectives" implied-preemption jurisprudence. *See Kordash*, 51 F.4th at 1293 (quoting *Hines*, 312 U.S. at 67). That doctrine, controversial even in cases posing genuine Supremacy Clause issues arising from claimed conflicts between federal and state law, *see Kansas v. Garcia*, 589 U.S. 191, 213 (2020) (Thomas, J., concurring), has no place in resolving claimed conflicts or tensions among federal laws.

As this Court explained in *POM Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102 (2014), cases involving "the alleged preclusion of a cause of action under one federal statute by the provisions of another federal statute" (or, here, by the emanations of the entire body of federal law) are not governed by the Supremacy Clause or by "the Court's complex categorization of the types of pre-emption." *Id.* at 111. Rather, resolving tensions within the body of federal laws is an issue of "statutory interpretation" to which courts must apply "traditional rules of statutory interpretation." *Id.* at 112. Those rules include the standards for determining whether one statute has been impliedly repealed by another whose terms are in irreconcilable conflict, and the canons of construction for determining whether a more specific law clarifies or narrows a more general law. *See id.*

Here the Court need not delve into such issues in detail because the applicable question presented is limited to whether the Supremacy Clause bars application of the FTCA's standard of liability. Moreover, because the court of appeals did not purport to identify any basis in ordinary principles of statutory construction for reading into the FTCA a broad exception for actions that have "some nexus" with federal policy and

can "reasonably be characterized as complying with the full range of federal law," this Court need not address the merits of any such hypothetical justification for the court of appeals' ruling.

Nonetheless, it is highly unlikely that traditional principles of statutory construction could ever justify a limitation of the FTCA comparable to that imposed by the Eleventh Circuit. No ordinary canon of statutory construction allows a federal statute's unambiguous choice of a standard of liability to be overridden by a court's view of the unenacted purposes and objectives of federal law generally. The court of appeals' approach reflects a sweeping assumption of authority to go "around or behind the words of the controlling text." Antonin Scalia & Bryan A. Garner, Reading Law 18 (2012). And the court's appeal to purposes and objectives to override the text of a statutory provision attempts not just to "achieve what [the court] believes to be th[at] provision's purpose," *id.*, but instead to achieve the purposes of federal law as a whole, untethered to the terms of any statute ever enacted by Congress. If such reliance on "some brooding federal interest" does not justify preemption of state law, *Va. Uranium*, 587 U.S. at 767 (lead opinion), it surely cannot overcome the plain terms of a federal statute.

The result of the Eleventh Circuit's holding is the creation of a broad and amorphous exception to the statute potentially applicable to almost any case. Innumerable federal actions have *some* "nexus" to federal policy and can at least be "characterized" as consistent with the "full range of federal law." Adopting such a sweeping exception to liability is inconsistent with the many carefully crafted defenses already built into the FTCA, and with this Court's approach to construing it over the decades since its enactment—an

approach reflecting the view that "[t]here is no justification for this Court to read exemptions into the Act beyond those provided by Congress" and that "[i]f the Act is to be altered that is a function for the same body that adopted it." *Rayonier*, 352 U.S. at 320.

CONCLUSION

This Court should reverse the judgment of the court of appeals.

Respectfully submitted,

SCOTT L. NELSON
Counsel of Record
ALLISON M. ZIEVE
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
snelson@citizen.org
Attorneys for Amicus Curiae

March 2025