No. 04-848

IN THE
Supreme Court of the United States

BARBARA DOLAN,

Petitioner,

v.

UNITED STATES POSTAL SERVICE and the UNITED STATES OF AMERICA,

Respondents.

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

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether a claim for personal injury caused by the negligence of a United States Postal Service employee while delivering mail is barred by 28 U.S.C. § 2680(b), the exception to the government's waiver of sovereign immunity in the Federal Tort Claims Act for claims "arising out of the loss, miscarriage, or negligent transmission of letters or postal matter."

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The opinion of the court of appeals is reported at 377 F.3d 285 (3d Cir. 2004) and is reproduced in the appendix to the petition for a writ of certiorari (Cert. App.) at 14a. The unreported opinion of the district court is reproduced at Cert. App. 1a.

JURISDICTION

The judgment of the court of appeals affirming the district court's dismissal of petitioner's complaint was entered on August 2, 2004. Cert. App. 14a. The petition for a writ of certiorari was filed on November 1, 2004, and granted on April 25, 2005. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Federal Tort Claims Act, 28 U.S.C. § 1346(b)(1), provides in relevant part:

> Subject to the provisions of [28 U.S.C. § 2680], the district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, 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.

28 U.S.C. § 2680 provides in relevant part:

> The provisions of this chapter and section 1346(b) of this title shall not apply to—

. . .

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

STATEMENT OF THE CASE

Petitioner Barbara Dolan suffered serious personal injuries when she fell over letters, packages, and periodicals that had been negligently left on her porch by a United States Postal Service (USPS) employee. Cert. App. 15a. After exhausting her administrative remedies, Mrs. Dolan filed suit against the United States under the Federal Tort Claims Act (FTCA).[1] The district court held that Mrs. Dolan's claim was barred by the exception to the FTCA for negligent transmission of mail, 28 U.S.C. § 2680(b), and dismissed the complaint for lack of subject matter jurisdiction. Cert. App. 2a, 13a. The court of appeals affirmed, concluding that § 2680(b) not only bars claims that arise when mail is lost, delayed, or damaged, but also bars claims for personal injuries caused by negligent acts of USPS employees while delivering mail. Cert. App. 20a. Although the court below acknowledged that its decision conflicts with *Raila v. United States*, 355 F.3d 118 (2d Cir. 2004), it reasoned that § 2680(b) should be construed in favor of protecting the government from lawsuits. Cert. App. 19a.

SUMMARY OF THE ARGUMENT

The FTCA waives the government's immunity from suit when government employees act negligently while performing their jobs, 28 U.S.C. § 1346(b)(1), but the waiver does not

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[1]Mrs. Dolan sued both the United States and the USPS, but she conceded that the United States is the only appropriate defendant. Cert. App. 16a.

apply to "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." 28 U.S.C. § 2680(b). Although the phrase "negligent transmission" may be susceptible to multiple interpretations when considered in isolation, the text, structure, purpose, and history of § 2680(b) demonstrate that it is intended to shield the government from liability when mail does not reach its appropriate destination on time and in good condition, but not to establish governmental immunity where a person is injured by the negligence of a USPS employee engaged in the delivery of mail. Moreover, the court below has interpreted § 2680(b) in a manner that would yield absurd results.

ARGUMENT

There is no dispute that § 2680(b) precludes FTCA suits to recover money damages from the United States for harm that results when mail is lost, delayed, or damaged in transit. This case turns on whether use of the phrase "negligent transmission" in § 2680(b) expands the scope of the exception to bar all claims for personal injury caused by the carelessness of a USPS employee simply because the tortfeasor was delivering mail.

The court below held that use of the phrase "negligent transmission" renders the government immune from suit for any damages caused by the negligence of USPS employees while mail is in transit. Cert. App. 20a. In contrast, *Raila* held that the phrase refers only to negligence that results in loss of, or damage to, the mail itself. The Second Circuit came to the right conclusion. Although it may be possible in the abstract to ascribe different meanings to the words "negligent transmission," their meaning is clear when considered in the context of § 2680(b). Application of the ordinary tools of statutory construction demonstrates that Congress did not intend

§ 2680(b) to shield the government from liability when the carelessness of USPS employees causes injury to a person.

I. Compensating Claims for Personal Injury Caused by the Negligence of USPS Employees While Delivering Mail Is Consistent with the Text, Structure, and Purpose of the FTCA and Its Exceptions.

A. The Text of the Postal Exception Supports a Narrow Construction.

The text of § 2680(b) indicates that "negligent transmission" refers to damage, loss, or delay of mail and not injury to persons resulting from negligent acts that occur while mail is in transit. Because § 2680(b)'s use of the words "loss" and "miscarriage" "can only refer to the damages and delay of the postal material itself[,]" "negligent transmission" should also be read to refer solely to the mail "in keeping with the rule of *noscitur a sociis*." *Raila*, 355 F.3d at 120-21 (citations omitted); *see also Wash. State Dep't of Social & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 384 (2003); *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961) ("[A] word is known by the company it keeps.").

It is beyond question that Congress intended to allow at least some claims against the government arising from the negligent acts of USPS employees while transmitting mail, because the FTCA allows claims against the government for injuries sustained as a result of the negligent operation of motor vehicles by USPS employees, and whether the vehicle is carrying mail at the time of the accident is irrelevant.

> One of the principal purposes of the Federal Tort Claims Act was to waive the Government's immunity from liability for injuries resulting

> from auto accidents in which employees of the Postal System were at fault. In order to ensure that § 2680(b), which governs torts committed by mailmen, did not have the effect of barring precisely the sort of suit that Congress was most concerned to authorize, the draftsmen of the provision carefully delineated the types of misconduct for which the Government was not assuming financial responsibility—namely, "the loss, miscarriage, or negligent transmission of letters or postal matter"—thereby excluding, by implication, negligent handling of motor vehicles.

Kosak v. United States, 465 U.S. 848, 855 (1984) (internal citation omitted); *see also Raila*, 355 F.3d at 121-22 ("The government does not contest that one of the primary purposes of the FTCA was to waive the sovereign immunity of the United States for accidents caused by the negligence of USPS employees driving postal vehicles—and that the postal matter exception was never intended to bar such claims.") (citing government's brief).

If Congress had intended § 2680(b) to have the sweeping breadth attributed to it by the court below, it could have simply excluded from the FTCA any claim arising from the activities of the USPS, just as it did with regard to the activities of the Tennessee Valley Authority and the Panama Canal Company. *See* 28 U.S.C. §§ 2680(*l*) and (m). Even if Congress had intended to exclude from FTCA coverage only claims resulting from the activities of USPS employees while engaged in transmitting mail, it could have explicitly said so. That Congress did not plainly exclude all such claims from the FTCA indicates that Congress intended a more narrow construction of § 2680(b).

Moreover, the term "negligent transmission" must be interpreted consistently with its historical use. Prior to the enactment of the FTCA, "negligent transmission" was a term of art used frequently in the context of suits against telegraph companies, *see* Thomas Atkins Street, *Negligent Transmission of Telegrams* in 1 *The Foundations of Legal Liability* (1906) at 435-56, and several states had statutes recognizing liability for "negligent transmission" of telegrams. *See*, *e.g.*, Fla. Rev. Gen. Stat. § 4383 (1919) (creating liability for "negligently fail[ing] promptly to transmit and deliver" telegrams); Mass. Gen. Laws ch. 166, § 19 (tercentenary ed. 1931) (creating liability on the part of telegraph companies for "negligence, or that of its agents, in transmitting" telegrams); Mo. Rev. Stat. § 5334 (1939) (creating liability for "negligence in transmitting" telegrams); *Klein v. W. Union Tel. Co.,* 13 N.Y.S.2d 441, 445 (App. Div. 1939) (noting defendant telegraph company "operates under statutes and rules of law subjecting it to penalties and damages for discrimination and negligent transmission of messages"). In the telegram context, "negligent transmission" referred to negligence that resulted in delays or errors in the telegrams themselves. *See, e.g.*, *W. Union Tel. Co. v. Priester,* 276 U.S. 252, 256 (1928) (considering a suit alleging negligence of telegraph company where, "[i]n the message as transmitted the word 'fifteen' was substituted for the word 'fifty.'"); *W. Union Tel. Co. v. Esteve Bros. & Co.*, 256 U.S. 566 (1921). The phrase "negligent transmission" did not refer to common-law negligence that resulted in physical injury. *See* Street, *supra*, at 436 (noting that negligent transmission of telegrams "does not take the form of physical hurt to the body or damage to property").

According to "[a] cardinal rule of statutory construction," in the "'absence of contrary direction,'" phrases with specialized legal meanings should be interpreted in accord

with those definitions, "'not as a departure from them.'" *Molzoff v. United States*, 502 U.S. 301, 307 (1992) (quoting *Morissette v. United States*, 342 U.S. 246, 263 (1952)); *see Buckhannon Bd. and Care Home, Inc. v. W. Va. Dept. of Health and Human Res.*, 532 U.S. 598, 615 (2001) ("Words that have acquired a specialized meaning in the legal context must be accorded their *legal* meaning."). The Court has recognized that "[t]his rule carries particular force in interpreting the FTCA." *Molzoff*, 502 U.S. at 307 ("'Certainly there is no warrant for assuming that Congress was unaware of established tort definitions when it enacted the Tort Claims Act in 1946, after spending some twenty-eight years of congressional drafting and redrafting, amendment and counter-amendment.") (quoting *United States v. Neustadt*, 366 U.S. 696, 707 (1961)). Thus, "negligent transmission" should be given the same meaning as it had in the telegram context at the time the FTCA was enacted. "Typically, the negligent transmission of telegraph messages involved the inadvertent substitution of words which changed the meaning of the transcribed message between sender and receiver. Carrying this analysis over to the post office, negligent transmission becomes the alteration or injury to the package or letter while in transit." *Suchomajcz v. United States*, 465 F. Supp. 474, 476 (E.D. Pa. 1979) (citations omitted).

Significantly, in early FTCA cases arising from personal injuries caused by the negligence of USPS employees in throwing mail pouches from moving trains, the courts did not address, and the government apparently did not raise, the postal exception. *See, e.g., Chicago, R.I. & P. Ry. Co. v. United States*, 220 F.2d 939 (7th Cir. 1955); *see also United States v. Acord*, 209 F.2d 709 (10th Cir. 1954). These cases confirm that "negligent transmission" was interpreted consistently with its contemporaneous use in the telegram context.

Finally, use of the phrase "[a]ny claim arising out of" at the beginning of § 2680(b) does not "evince[] Congress's intent to broaden rather than limit the exception for 'negligent transmission of letters or postal matter,'" as found by the court below. Cert. App.19a. Rather, the phrase "[a]ny claim arising out of" simply extends the coverage of the exception to all consequential losses and damages flowing from the types of acts for which governmental immunity is retained. It sheds no light on the proper scope of "negligent transmission."

B. The Second Circuit's Narrow Construction of § 2680(b) Is Consistent with the Structure and Purpose of the FTCA, Its Exceptions, and this Court's Decision in *Kosak*.

To the extent that § 2680(b) can be read in multiple ways, the Court should consider the structure and purpose of the statute and interpret the postal exception to fit harmoniously within the whole. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 345-46 (1997); *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995); *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 737 (1985). In general, the FTCA waives sovereign immunity to provide relief to those injured by the tortious conduct of government employees acting within the scope of their employment. 28 U.S.C. § 1346(b)(1). The Third Circuit's view of § 2680(b) would bar most if not all claims for personal injuries caused by the negligence of USPS employees because USPS employees are generally involved in the transmission of mail. *Raila*, 355 F.3d at 120. Such an expansive reading of the exception runs counter to the general purpose of the FTCA and cannot be squared with its structure.

In *Kosak*, the Court addressed whether the customs service exception to the FTCA, 28 U.S.C. § 2680(c), was broad

enough to shield the government from liability for injuries to detained property caused by the negligence of customs officials in handling it, or whether the exception covered only claims for damage caused by the detention itself.[2] 465 U.S. at 851-52. The Court found that the language of § 2680(c) was broad enough to cover claims arising from negligent handling or storage of detained property, in part because "[t]he specificity of [the postal exception of] § 2680(b), in contrast with the generality of § 2680(c), suggests, if anything, that Congress intended the former to be *less* encompassing than the latter." *Id.* at 855 (emphasis in original). Although the Court found that the plain language of § 2680(c) was broader than the language at issue here, *Kosak* does not suggest that even the customs exception would reach injuries other than those to property.

Kosak identified three rationales for the FTCA exceptions. *Id.* at 858. These three general purposes do not support the expansive reading of § 2680(b) adopted by the court below.

The first rationale for the FTCA exceptions is to ensure that certain governmental activities are not disrupted by the threat of damage suits. *Id.* Closely related is the second rationale—avoiding exposure to liability for excessive or fraudulent claims. *Id.* In the context of § 2680(b), these rationales support the view that the exception shields the government from liability for any damages that result when

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[2]At the time of the decision in *Kosak,* 28 U.S.C. § 2680(c) excepted from the FTCA "[a]ny claim arising in respect of . . . the detention of any goods or merchandise by any officer of customs[.]" This section was amended by the Civil Asset Forfeiture Act of 2000, Pub. L. No 106-185, § 3(a), 114 Stat. 202, 211 (2000).

mail is lost, damaged, or delayed, but they provide little support for the view that § 2680(b) shields the government from liability for injuries to *people* caused by the negligence of one engaged in making deliveries, just because they happen to be deliveries of mail.

The core function of the USPS is to deliver large quantities of mail at low cost. As a practical matter, the sheer volume of mail precludes the use of a system for tracking the whereabouts and condition of every piece of postal matter deposited with the USPS without the added cost of postal insurance or registration, and presents obvious proof problems in dealing with claims that mail was lost or damaged. If one could sue the government for lost or damaged mail, the systems required to reduce the volume of claims and potential for fraud would disrupt the core function of the USPS. This explains the application of the exception to claims for lost or damaged mail. *See Molzof*, 502 U.S. at 311 ("The § 2680 exceptions are designed to protect certain important governmental functions and prerogatives from disruption."). However, this reasoning does not apply with equal force to personal injury claims arising from the negligence of USPS employees who happen to be delivering mail. Such claims are not related to the unique function of the USPS, and because a claimant must prove that tortious conduct caused a personal injury, they do not carry the same potential for excess or fraud as do claims that mail was lost or damaged.

This case underscores our point. Mrs. Dolan was injured in a slip-and-fall caused by mail that was negligently left on her porch. Such a hazardous condition could just as easily have been created by any delivery service that leaves packages at the recipient's doorstep, or by any other private person who might leave an article on someone's porch. Thus, the negligent act that caused Mrs. Dolan's injury is not related

to the core function of the USPS as are claims arising from lost or damaged mail, and the exposure to excessive or fraudulent claims is no greater for the government than it is for any business that makes unattended deliveries. On the contrary, the risk of such claims is probably lower for the USPS than for other delivery services because USPS letter carriers ordinarily put the mail in a mailbox dedicated to that purpose rather than leaving it in an unexpected location. By contrast, private delivery services are prohibited from utilizing the mailbox. 18 U.S.C. § 1725; *see also U.S. Postal Serv. v. Council of Greenburgh Civil Assocs.*, 453 U.S. 114 (1981). In addition, because the FTCA does not provide for trial by jury, 28 U.S.C. § 2402, the risk of inordinately high damage awards is lower for the government than for private businesses.

Kosak identified a third rationale for the FTCA exceptions—to prevent extending FTCA coverage to suits for which adequate remedies were already available at the time the statute was enacted. 465 U.S. at 858-60; *see also Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 427 n.5 (1995). This rationale also supports a construction of the postal exception that precludes suits for loss of or damage to the mail itself, but allows suits for personal injuries caused by the negligence of USPS employees.

When the FTCA was enacted in 1946, it was well established that the postal laws and regulations provided an exclusive and adequate remedy for claims of lost or damaged mail. *See* 39 U.S.C. §§ 245, 381 (1940 & Supp. V 1945) (providing compensation of up to $1,000 for lost or damaged registered mail and $200 for lost or damaged insured mail); Postal Laws and Regulations pt. 44 (1948) (detailing intricate procedures on how USPS officials were to report and investigate claims of "loss, rifling, damage, or other mistreatment of mail matter, regardless of class, kind or

contents"). As this Court observed just seven years before the Act:

> There are over 44,000 post offices under the Post Office Department and it is common knowledge that millions of items of mail go through them every year. It is rather obvious that numerous claims, many of them for small amounts, are likely to arise in the course of many transactions. Under the Department's Regulations there is a fairly complete administrative formula for handling these claims from discovery to satisfaction. These facts . . . convince us that the Congress intended that claims . . . would be handled through the government rather than through various suits by individuals.

United States ex rel. Midland Loan Fin. Co. v. Nat'l Sur. Corp., 309 U.S. 165, 175 (1940); *see also id.* at 175 n.24 (citing regulations providing for recovery by "senders or owners of the mail" for "loss, rifling, damage, wrong delivery of, or depredation upon" mail "by reason of fault or negligence, of a postal employee or mail contractor or an agent or employee thereof"). In fiscal year 1946 alone, the Department made payments on nearly 240,000 postal insurance claims at a cost of over $2.1 million. *Annual Report of the Postmaster General for the Fiscal Year Ended June 30, 1946* at 96 tbl.30. In addition, the courts recognized that, because registration and insurance were available "to secure protection against loss or damage" to the mail, allowing suit outside the regulations would "circumvent the entire statutory scheme." *Twentier v. United States*, 109 F. Supp. 406, 409 (Ct. Cl. 1953) ("The United States is liable to the owners of lost or damaged mail only to the extent to which it has consented to be liable, and the extent of its liability is defined by the Postal Laws and

Regulations . . . [T]he liability of the Government in case of loss or damage is fixed by these regulations."). As explained in Part II below, the legislative history confirms that the postal exception to the FTCA was based on the availability of these protections.

Although registration, insurance, and search procedures provided an adequate remedy for lost or damaged mail, those programs did not cover personal injuries caused by the negligence of USPS workers acting within the scope of their employment. *See* 39 C.F.R. § 16.61 (1938) (limiting recovery through postal insurance to injuries to the mail itself while in the custody of the USPS). Prior to the FTCA, the Post Office Department had discretion to settle claims for personal injuries caused by USPS employees, but only for $500 or less. 31 U.S.C. § 224c (1940). This limited discretionary remedy for personal injuries was repealed and replaced by the FTCA scheme, Legislative Reorganization Act of 1946, ch. 753, § 424(a), 60 Stat. 812, 846-47 (1946), but the postal registration and insurance program has continued to provide the remedy for lost and damaged mail. Those who suffer personal injury as a result of negligence by USPS employees would have no remedy if the FTCA's postal exception applied to such claims. Thus, *Kosak*'s third rationale suggests that the postal exception was not intended to extend to such injuries. Indeed, without a remedy under the FTCA, Mrs. Dolan has no remedy at all.

C. The Third Circuit Construed the Exception Broadly Based on a Rationale Rejected by this Court.

In the decision below, the Third Circuit held that the FTCA's postal exception should be construed broadly in favor of the government based on the principle that waivers of sovereign immunity are strictly construed. That is precisely the

approach that *Kosak* rejected as "unhelpful." 465 U.S. at 854 n.9. Because "unduly generous [to the government] interpretations of the exceptions run the risk of defeating the central purpose of the statute," *Kosak* explained, the proper approach in interpreting the FTCA's exceptions is to "identify 'those circumstances which are within the words and reason of the exception'—no less and no more." *Id.* (quoting *Dalehite v. United States*, 346 U.S. 15, 31 (1953)). This Court has since reaffirmed that approach. *See Smith v. United States*, 507 U.S. 197, 203 (1993) ("[W]e should not take it upon ourselves to extend the waiver beyond that which Congress intended. Neither, however, should we assume the authority to narrow the waiver that Congress intended.") (quoting *United States v. Kubrick*, 444 U.S. 111, 117-18 (1979)).

Indeed, to the extent that any special rule of construction is appropriate in the context of the FTCA exceptions, this Court's cases have suggested that exceptions to the "'sweeping'" waiver of sovereign immunity in the FTCA should be "narrowly construed." *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 34 (1992) (quoting *United States v. Yellow Cab Co.*, 340 U.S. 543, 547 (1951)); *see Block v. Neal*, 460 U.S. 289, 298 (1983); *United States v. Aetna Cas. & Sur. Co.*, 338 U.S. 366, 383 (1949) ("We think that the congressional attitude in passing the Tort Claims Act is more accurately reflected by Judge Cardozo's statement . . . 'The exemption of the sovereign from suit involves hardship enough where consent has been withheld. We are not to add to its rigor by refinement of construction where consent has been announced.'") (quoting *Anderson v. Hayes Constr. Co.*, 243 N.Y. 140, 147, 153 N.E. 28, 29-30 (1926) (Cardozo, J.)).

II. The Legislative History of the Exception Shows That Congress Did Not Intend to Bar Claims for Personal Injuries Caused by the Negligence of USPS Employees While Transporting Mail.

The legislative history of § 2680(b), sparse as it is, confirms that Congress meant to exclude claims for lost, damaged, or delayed mail, on the ground that postal insurance and registered mail provided adequate protection to the postal customer. The legislative history does not reveal any intent to preclude governmental liability for traditional, common-law torts causing personal injury, including those committed by USPS employees.

The FTCA was enacted as title IV of the Legislative Reorganization Act of 1946, ch. 753, 60 Stat. 812, 842-47, but the legislative history of the enacted bill focused on internal reorganization of Congressional operations and not on the FTCA provisions. Consequently, the Court's review of the FTCA's legislative history has extended back to prior, stand-alone versions of the bill that Congress considered for more than two decades prior to the bill's enactment. *See Kosak*, 465 U.S. at 855-61.

The postal exception has its origins in the first versions of a proposed tort claims system. For instance, H.R. 8651, 69th Cong. (1926), contained an exception for "[a]ny claim arising out of the loss or miscarriage or negligent transmission of letters or postal matters." *Id.* § 8(a)(1). This language passed the House in the form of the Committee on Claims's amendment to S. 1912, 69th Cong. (1926), and was included in the tort claims legislation, H.R 9285, 70th Cong. § 4(a)(1) (1929), that was passed by the full Congress in 1929 but pocket

vetoed by President Coolidge.[3] The history of the postal exception in H.R. 8651, 69th Cong., is particularly helpful in determining the scope of the nearly identical postal exception in the enacted bill. The 69th Congress considered only three enumerated exceptions to FTCA liability, making the rationale for the postal exception more individually identifiable than when grouped with the other eleven exceptions in the bill that was later enacted.[4] In its report on H.R. 8651, 69th Cong., the Committee on Claims stated that the purpose of the exceptions "is to exclude from consideration under this bill certain classes of claims for which satisfactory relief is available under existing law." H.R. Rep. 69-206, at 4 (1926).

That the postal exception was based on Congress's identification of an extant remedy—the availability of postal insurance and registered mail—is demonstrated by the Committee on Claims's 1931 report on a revised proposal for a federal tort claims act, H.R. 17168, 71st Cong. (1931), that had grown to include eight exceptions. After listing the three exceptions that were in the 1926 legislation, the committee noted that "[i]n all of the last-mentioned cases settlements are provided by other statutes." H.R. Rep. 71-2800, at 9-10 (1931).

The nature of the available remedy was fleshed out by O.R. McGuire, Counsel for the Comptroller General of the United States, in his 1932 testimony before the Committee on Claims:

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[3]For a general history of the initial efforts to secure passage of a tort claims act, see O.R. McGuire, *Tort Claims Against the United States*, 19 Geo. L.J. 133 (1931).

[4]These exceptions were the postal exception, an exception for the "assessment or collection" of taxes and duties, and an exception for previously recognized liability for certain navy, army, and admiralty activities. H.R. 8651, 69th Cong. § 8(a).

> Most of these exceptions are already taken care of by existing law. For instance take the first one, that any claim arising out of the loss or miscarriage or negligent transmission of letters or postal matter shall not be covered by this proposed act. Protection may be secured by insurance and registration. There is a provision of law for paying up to $50 for loss in mails, unless a higher value is declared.

General Tort Bill: Hearing Before a Subcomm. of the House Comm. On Claims, 72nd Cong., at 18 (1932); *see* Postal Laws and Regulations §§ 863, 1070 (1924) (providing compensation "in case of injury, loss or rifling of domestic registered mail"). Likewise, Alexander Holtzoff, a Special Assistant to the Attorney General, in explaining the postal exception to a subcommittee of the Senate Judiciary Committee in 1940, described the available remedies for lost mail:

> The first [exception] is [for] any claim arising out of the loss of, miscarriage, or negligence in the transmission of letters or postal matter. Every person who sends a piece of postal matter can protect himself by registering it, as provided by the postal laws and regulations.

Tort Claims Against the United States: Hearing Before a Subcomm. of the Senate Comm. on the Judiciary, 76th Cong. at 38 (1940).[5]

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[5]The Court has given significant weight to Alexander Holtzoff's interpretations of the FTCA, calling him "one of the major figures in the development of the Tort Claims Act." *Kosak*, 465 U.S. at 856.

In later bills, as the number of exceptions grew to a dozen or more, committee reports simply lumped all the exceptions together as "activities which should be free from the threat of damage suit, or for which adequate remedies are already available." S. Rep. 79-1400, at 33 (1946); *see also* H.R. Rep. 79-1287, at 6 (1945); S. Rep. 77-1196, at 7 (1942); H.R. Rep. 77-2245, at 10 (1942) (using nearly identical language to explain the exceptions). Nothing indicates that the drafters of the statute that was actually enacted in 1946 viewed the purpose of the postal exception as having changed since the initial versions of the FTCA that included almost identical language.

Thus, given Congress's intent to exclude from the FTCA claims for which other remedies were available, the existence of postal insurance and registered mail explains why § 2680(b) precludes claims for damages suffered from lost or damaged mail. But the legislative history of the postal exception offers no evidence that Congress intended to exclude claims for personal injuries caused by USPS employees while delivering mail where no other remedy is provided by law.

Indeed, the legislative history of the FTCA shows that Congress did not intend for the exceptions to cover injuries that would create traditional, common-law tort liability between private parties. For instance, while Congress noted a desire to exclude suits under the FTCA for the exercise of discretion by regulatory agencies' employees, it specified that "the common-law torts of employees of regulatory agencies" would still create government liability under the FTCA. H.R. Rep. 79-1287, at 6. Likewise, the exceptions for harms caused by the Trading with the Enemy Act or the fiscal operations of the Treasury (codified at 28 U.S.C. § 2680(e)(i)) were explained as still allowing recovery for injuries caused by government employees who were engaged in administering those programs, if premised on traditional, common-law concepts of tortious conduct between

private parties. *See id.; see also* Note, *The Federal Tort Claims Act*, 56 Yale L.J. 534, 546 (1947) ("[T]he provisions are carefully worded in the attempt not to include the ordinary common-law torts of negligence of employees of those agencies, disassociated from their primary purposes. In hearings and committee reports this point is frequently stressed.").

III. The Construction of the Statute Adopted Below Would Yield Absurd Results.

By adopting a construction of § 2680(b) that conditions governmental liability for the negligence of USPS employees on whether mail is being transmitted at the time of the negligent act, the court below has interpreted § 2680(b) in a manner that would yield absurd results. For example, under the Third Circuit's view, an individual who suffered a slip-and-fall on an empty mail bag negligently left on the sidewalk by a letter carrier after completion of the day's deliveries could pursue a claim under the FTCA, but if the bag contained mail that was still in transmission, recovery would be barred.

Raila discussed two similar hypothetical situations that "are plainly absurd and caution against adoption of the government's interpretation of [§ 2680(b)]." 355 F.3d at 123.

> [C]onsider a situation in which a USPS employee is driving a postal truck in the course of a mail delivery route. The driver throws a package toward the home to which it is to be delivered. The package hits a pedestrian and causes injury. At the same time, the driver has taken his eye off the road and the truck strikes another pedestrian, killing him. Under the government's proposed interpretation of "negligent transmission," the government would

> be liable for the injury caused by the truck, but not by the flying package.
>
> Consider also a situation in which two customers enter a post office and one turns right, the other turns left. Both slip on puddles of water that had been created through the negligence of postal employees. One puddle was created when a postal worker negligently dropped a parcel, shattering a vessel containing liquid. The other puddle was created by the janitor, who negligently failed to wipe away all the water when washing the floor. Under the defendant's proposed construction of "negligent transmission" the government would be liable for the injury caused by the janitor's puddle, but not for the injury caused by the shattered vessel, because the latter negligence occurred during the "transmission" of postal material.

Id. at 122. Congress did not intend such bizarre results when it enacted a sweeping waiver of the government's immunity for ordinary common-law torts. It included an exception to protect the government from suit by patrons claiming that mail had been lost, damaged, or delayed in transit, but it did not preclude personal injury suits simply because the tort was committed during the delivery of mail.

CONCLUSION

The decision below should be reversed and the case remanded for proceedings on the merits of Mrs. Dolan's claim.

Respectfully Submitted,

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