



Supreme Court Says Negligence Suits Against Military Contractor Operating in a Combat Zone Are Not Preempted

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On April 22, 2026, the U.S. Supreme Court decided the case *Hencely v. Fluor Corp.* This case involves a former servicemember (Winston Tyler Hencely) who sued a military contractor (Fluor) under South Carolina law for injuries he suffered on a U.S. military base in Afghanistan in 2016, allegedly due to Fluor’s negligence. Fluor employed an individual who carried out a suicide-bomb attack at the base that wounded Hencely. The [question](#) presented to the Supreme Court was whether to extend its decision in *Boyle v. United Technologies Corp.* (1988) (which [preempted](#) tort claims against a military contractor under the [Federal Tort Claim Act’s](#) [FTCA’s] [discretionary function exception](#)) “to allow federal interests emanating from the [FTCA’s] [combatant activities exception](#) to preempt state tort claims against a government contractor for conduct that breached its contract and violated military orders.” (Generally, the FTCA allows individuals to sue the federal government, but the combatant activities exception preempts claims brought against the federal government when harm arises out of military combatant activities during wartime.)

The Court, in a 6-3 decision, [determined](#) that its holding in *Boyle* does not extend to situations in which a contractor fails to carry out government instructions and that state-law tort claims against military contractors involving combatant activities are only preempted when contractors’ conduct can be considered the government’s own conduct. The Court also [concluded](#) that the Constitution’s grant of war powers exclusively to the federal government does not preempt all state-law tort claims emanating from war zone activities. Accordingly, the Court [vacated](#) the lower courts’ judgments and remanded the case for proceedings consistent with its opinion.

Background and Procedural History

For a brief outline of federal preemption and the FTCA, see this [Legal Sidebar](#). The [Sidebar](#) also provides a description of relevant Supreme Court and federal appellate court precedent concerning military contractors and federal preemption under the combatant activities exception, as well as the [background](#) and procedural history of *Hencely*.

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The Majority Opinion

The Supreme Court vacated the U.S. Court of Appeals for the Fourth Circuit's (further references to federal circuit courts appear according to the jurisdictional designation only, such as "Fourth Circuit") [holding](#) that relied on *Boyle* to preempt Hencely's claims under the combatant activities exception. The circuit court [reasoned](#) that *Boyle* stands for the proposition that FTCA exceptions can preempt claims against federal contractors. The lower court further [utilized](#) the "command-authority" test to conclude that, since the military maintained command authority over the supervision of local nationals hired at the base, Hencely's claims were [preempted](#) by the combatant activities exception.

Rejecting the Fourth Circuit's analysis, the Supreme Court [stated](#) that *Boyle* involved "a special circumstance" where state law was preempted because the contractor was being sued for something the government directed the contractor to do. Fluor's actions, on the other hand, were not authorized by the government and were, in the Court's [view](#), contrary to government instructions (i.e., Fluor failed to satisfy its contractual obligations by deficiently supervising the bomber). The Court [determined](#) that "*Boyle* cannot be read to 'protect a contractor from liability resulting from the contractor's violation of federal . . . policy'" and declined to extend *Boyle* to preempt the claims against Fluor.

The Supreme Court also [concluded](#) that the Fourth Circuit's [interpretation](#) of the command-authority test (i.e., that the combatant activities exception exempts all claims against contractors engaged in combatant activities under the military's command authority, even when the contractors are alleged to have violated military instructions) "sweeps too broadly." The Court [maintained](#) that the test fails to evaluate whether "'the challenged action can reasonably be considered the military's *own* conduct or decision and the operation of state law would conflict with that decision.'" The Court therefore [stated](#) that the Fourth Circuit's decision "contradicted" *Boyle*.

The Supreme Court additionally [addressed](#) Fluor's and the Administration's argument that the Constitution's assignment of war powers to Congress and the executive branch implicitly preempts any lawsuits brought against military contractors operating in combat zones. The Court [resolved](#) that it does not and recounted the long-standing historical prevalence of individuals enforcing their legal rights when they are violated during armed conflict. "[A]bsent a statute to the contrary," the Court [continued](#), "States can regulate or tax federal contractors on the same terms as any private company, even where the party asserts an indirect burden on federal activities," including armed conflict. Under *Boyle*, contractors generally only have a constitutional defense when they are sued for conduct that the federal government requested.

The Dissent

The dissent (authored by Justice Alito, and joined by Chief Justice Roberts and Justice Kavanaugh) [argued](#) that, given the Constitution's exclusive grant of war powers to the federal government, this lawsuit should have been preempted because "no state law, including state tort law, may intrude on the Federal Government's authority over combat-related operations." The dissent [contended](#) that the Court's decision "substantially interfere[s] with the Government's ability to wage war" by subjecting military decisions in a combat zone to judicial scrutiny and, potentially, state regulation. Litigation of Hencely's claims will likely, in the dissent's [estimation](#), "entail an evaluation of the way the Federal Government assessed the risks and benefits of [the bomber's] employment" because Fluor will likely seek to defend itself by arguing that the military was entirely or meaningfully responsible for the attack. The dissent also expressed that litigation could involve discovery of sensitive combat-related documents, depositions and testimony involving sensitive information, and interference with servicemembers' current national security responsibilities. The dissent argued that allowing this lawsuit to go forward could also undermine

the government's use of contractors for tasks related to combat operations by exposing military contractors to potential liability.

Considerations for Congress

Congress could act in several ways in light of the *Hencely* decision. First, Congress could take no action and allow courts to further develop this area of law. In addition to the Fourth Circuit's, other federal appellate courts' interpretations of preemption and the command-authority test under the combatant activities exemption are now abrogated by the Supreme Court's conclusions in *Hencely* (e.g., the [D.C. Circuit](#) and [Third Circuit](#)).

Congress could also consider legislation allowing for preemption of lawsuits against government contractors for combatant activities. An example of congressional legislation that preempts lawsuits against government contractors is for [atomic weapons testing](#). Congress could craft such legislation to either allow for preemption generally or specify preemption in certain situations. An example of such legislation would be a provision that expressly overrules the Supreme Court's holding in *Hencely* that the combatant activities exception does not apply to contractors that fail to uphold their contractual obligations, similar to the command-authority test noted above. Congress could, alternatively, consider including the Supreme Court's qualification in *Hencely* that lawsuits against contractors that fail to uphold their contractual obligations are not preempted under the combatant activities exception. Congress could also consider legislation that provides for additional limitations on preemption, such as limiting preemption to contractors that were following specific government commands or directions rather than exercising discretion in carrying out their contractual obligations.

Congress may additionally contemplate foreclosing preemption under the combatant activities exception by constraining or eliminating the provision's application to contractors. Congress previously explicitly excluded federal contractors from an FTCA provision by providing that contractors are not included in the [definition](#) of "federal agency" under the Act.

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