## AMERICAN BAR ASSOCIATION

### SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
### CENTER FOR DIVERSITY, EQUITY AND INCLUSION
### TORT TRIAL AND INSURANCE PRACTICE SECTION

### REPORT TO THE HOUSE OF DELEGATES

### RESOLUTION

RESOLVED, That the American Bar Association urges Congress to amend 28 U.S.C. § 2680(h) to remove “interference with contract rights” from the list of claims excepted from the Federal Tort Claims Act’s waiver of sovereign immunity, thereby subjecting the United States to liability for tortious interference with contractual relations committed by federal employees acting within the scope of their employment, in the same manner and to the same extent as a private person would be liable under the law of the place where the act or omission occurred; and

FURTHER RESOLVED, That the American Bar Association urges that, in enacting such amendment, Congress make clear that the discretionary function exception codified at 28 U.S.C. § 2680(a) continues to apply to shield legitimate governmental actions grounded in considerations of public policy that may incidentally affect private contractual relations, so that the amendment targets only conduct that constitutes improper interference with an existing contractual relationship and that would be tortious if committed by a private person under applicable state law.

## REPORT

## I. Introduction and Summary of the Resolution

This Resolution urges Congress to amend the Federal Tort Claims Act to remove "interference with contract rights" from the list of claims for which the United States retains sovereign immunity under 28 U.S.C. § 2680(h). Under the FTCA as currently written, the United States has waived its sovereign immunity for most tort claims arising from the negligent or wrongful acts of federal employees acting within the scope of their employment.[1] The statute provides that the government shall be liable "in the same manner and to the same extent as a private individual under like circumstances."[2] However, § 2680(h) excepts from this waiver "[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights."[3] This Resolution addresses only the last item on that list: interference with contract rights.

The inclusion of tortious interference with contractual relations in the § 2680(h) exception means that when a federal employee, acting within the scope of employment, intentionally and improperly induces a third party to breach or refuse to perform its contract with a private person or entity, the injured party has no remedy against the United States. The individual federal employee is likewise shielded from personal liability by the Westfall Act.[4] The result is a complete remedial vacuum: the injured party has suffered real and quantifiable economic harm caused by the wrongful conduct of a government agent, yet has no one to sue and no means of recovery. This outcome is inconsistent with fundamental principles of accountability and the rule of law, and no sound policy justification supports its continuation.

## II. Statutory Background and Legislative History

Congress enacted the FTCA in 1946 as a comprehensive waiver of the federal government's sovereign immunity for tort claims.[5] The Act was the culmination of nearly three decades of legislative effort to replace the cumbersome and inequitable private bill system, under which a person injured by a federal employee's tortious conduct could obtain compensation only by persuading an individual Member of Congress to introduce, and Congress as a whole to pass, a private bill providing relief. The FTCA transferred this adjudicative function from the legislature to the federal courts, establishing that the government would be liable for the torts of its employees on the same terms as a private employer.

---

[1] 28 U.S.C. § 1346(b)(1).

[2] 28 U.S.C. § 2674 ("The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances.").

[3] 28 U.S.C. § 2680(h).

[4] 28 U.S.C. § 2679(b)(1) (providing that the FTCA remedy against the United States is exclusive of any other civil action against the employee for acts within the scope of employment); *see also Hernandez v. Mesa*, 589 U.S. 93 (2020); Federal Employees Liability Reform and Tort Compensation Act of 1988 (Westfall Act), Pub. L. No. 100-694, 102 Stat. 4563.

[5] 28 U.S.C. §§ 2671–2680.

At the same time, Congress included a list of exceptions in § 2680 for categories of claims as to which the waiver would not apply. Section 2680(h) listed several torts—including assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, and interference with contract rights—for which sovereign immunity was retained. The legislative history of the FTCA provides remarkably little explanation for why these particular torts were selected for exclusion.[6] What commentary exists suggests three rationales: a concern that plaintiffs would exaggerate claims for these types of torts, a desire to implement the waiver of sovereign immunity incrementally, and a wish to retain congressional control over the payment of damages for intentional torts through the private bill process.[7]

Of these three rationales, the first—concern about exaggerated claims—has the weakest application to tortious interference with contract. Unlike assault, battery, or false imprisonment, which involve subjective accounts of physical encounters and are often disputed on credibility grounds, tortious interference claims involve objectively verifiable elements: the existence of a valid contract, the defendant's knowledge of that contract, intentional and improper conduct directed at a third party, the third party's breach or nonperformance, and resulting economic damages.[8] These elements are susceptible to documentary proof—contracts, correspondence, communications with third parties, financial records—and do not present the same evidentiary challenges that may have concerned Congress with respect to torts involving physical confrontations or personal dignity.

The second rationale—incremental implementation—has been overtaken by events. In 1974, Congress amended § 2680(h) to add the law enforcement proviso, which restored the FTCA's waiver of sovereign immunity for six of the listed torts—assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution—when committed by investigative or law enforcement officers.[9] This amendment demonstrated Congress's willingness to revisit the original exceptions and to extend the waiver to additional categories of intentional torts where experience had shown that immunity was producing unjust results. The 1974 amendment did not, however, extend to interference with contract rights, libel, slander, misrepresentation, or deceit—even for law enforcement officers.[10] More than fifty years have now passed since the 1974 amendment, and the

---

[6] *See* Congressional Research Service, *The Federal Tort Claims Act (FTCA): A Legal Overview*, R45732, at 25 (updated Apr. 17, 2023) ("The FTCA's 'legislative history contains scant commentary' discussing Congress's rationale for exempting these categories of torts from the FTCA's waiver of sovereign immunity.").

[7] *See* Iowa Law Review, *Deficiencies in the Federal Tort Claims Act "Law Enforcement Proviso"*, 107 Iowa L. Rev. 1857 (2022) (identifying three legislative themes: concern about exaggerated claims, desire for incremental implementation, and wish to retain private bill authority over intentional tort payments).

[8] *See* Restatement (Second) of Torts § 766 (Am. L. Inst. 1979) (setting forth elements of intentional interference with performance of a contract by a third person); Restatement (Third) of Torts: Liability for Economic Harm § 19 (Am. L. Inst. 2020).

[9] Act of Mar. 16, 1974, Pub. L. No. 93-253, § 2, 88 Stat. 50 (amending 28 U.S.C. § 2680(h)).

[10] 28 U.S.C. § 2680(h) (proviso). The law enforcement proviso restored the FTCA waiver for assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution committed by investigative or law enforcement officers. It did not restore the waiver for libel, slander, misrepresentation, deceit, or interference with contract rights.

incremental approach has not produced any further legislative action to narrow the interference-with-contract exception. The time for further incrementalism has passed.

The third rationale—retaining congressional control through private bills—is similarly obsolete. The private bill system that existed in 1946 has effectively ceased to function as a meaningful mechanism for compensating tort victims. Private bills are exceedingly rare in the modern Congress, and no one seriously contends that a person injured by a federal employee's tortious interference with a contract can realistically obtain relief through the private bill process.

## III. The Remedial Vacuum Created by the Exception

The practical effect of the § 2680(h) exception for interference with contract rights is to create a complete remedial vacuum for persons injured by this tort when committed by a federal employee. This vacuum results from the interaction of two statutory provisions. First, § 2680(h) bars any FTCA claim against the United States for interference with contract rights. Second, the Westfall Act, codified at 28 U.S.C. § 2679(b)(1), provides that the FTCA remedy against the United States is the exclusive remedy for torts committed by federal employees acting within the scope of their employment, thereby immunizing the individual employee from personal tort liability.[11] The combined operation of these two provisions means that no one—neither the United States nor the individual employee—can be held liable for tortious interference with contract committed within the scope of federal employment.[12]

This remedial vacuum is not merely theoretical. The federal government interacts with private contractual relationships on a vast scale. Federal employees make procurement decisions, issue and revoke licenses and permits, conduct regulatory inspections, make employment and personnel decisions, administer grants and cooperative agreements, and take enforcement actions—all of which can affect private contractual relationships. In the ordinary case, such governmental actions are protected by the discretionary function exception at § 2680(a), and properly so. But the discretionary function exception does not protect conduct that lacks an element of judgment or choice, or conduct that is not grounded in considerations of public policy.[13] Where a federal employee acts outside the bounds of legitimate policy discretion and intentionally and improperly interferes with a private contractual relationship—for example, by deliberately sabotaging a private contractor's relationship with a subcontractor out of personal animus, or by improperly pressuring a third party to terminate a contract with a private individual as retaliation for protected activity—the injured party deserves a remedy.

---

[11] 28 U.S.C. § 2679(b)(1).

[12] *See Fed. Deposit Ins. Corp. v. Meyer*, 510 U.S. 471, 478 (1994) (holding that a claim not cognizable under § 1346(b) falls outside the FTCA's exclusive-remedy provision and recognizing that a waiver of sovereign immunity does not itself supply a cause of action); see also Congressional Research Service, supra note 5, at 26 (noting that the combination of § 2680(h) and § 2679 can "leav[e] certain tort victims without any remedy").

[13] *See Berkovitz v. United States*, 486 U.S. 531, 536–37 (1988) (establishing a two-part test: whether the challenged conduct involves an element of judgment or choice, and whether the judgment is of the kind that the discretionary function exception was designed to shield).

The absence of such a remedy is inconsistent with the FTCA's fundamental purpose. Congress enacted the FTCA to ensure that the federal government would be held accountable for the torts of its employees on the same terms as a private employer. The retention of immunity for interference with contract rights creates an anomalous carve-out in which the government is held to a lower standard of conduct than any private person or business. No private employer enjoys blanket immunity for its employees' tortious interference with the contracts of third parties. There is no sound reason why the federal government should enjoy such immunity.

## IV. The Discretionary Function Exception Provides Adequate Protection for Legitimate Governmental Action

Opponents of removing the interference-with-contract exception may argue that doing so would expose the government to liability for routine regulatory and policy decisions that incidentally affect private contracts. This concern, while understandable, is unfounded. The discretionary function exception at 28 U.S.C. § 2680(a) already provides comprehensive protection for governmental actions that involve the exercise of judgment grounded in considerations of public policy.[14] Under the two-part test established in *Berkovitz v. United States* and refined in *United States v. Gaubert*, the discretionary function exception bars any claim based on conduct that involves an element of judgment or choice and that is susceptible to policy analysis.[15]

This means that if a federal regulatory agency takes an enforcement action that has the incidental effect of disrupting a private contract, that action would be protected by the discretionary function exception—regardless of whether the interference-with-contract exception in § 2680(h) exists. The same is true of decisions regarding procurement, licensing, permitting, grant administration, and any other governmental function that involves the exercise of policy judgment. Removing the interference-with-contract exception from § 2680(h) would not affect these routine governmental activities in any way. What it would do is open the door to claims in the narrow category of cases where a federal employee acts outside the bounds of legitimate discretion and intentionally and improperly interferes with a specific contractual relationship in a manner that would be tortious if committed by a private person. The second Resolved clause of this Resolution expressly reinforces this point by urging Congress to clarify that the discretionary function exception continues to apply in full force.

## V. The Anomalous Position of Tortious Interference Within § 2680(h)

Interference with contract rights occupies an anomalous position within the § 2680(h) list. The other torts enumerated in § 2680(h) fall into two recognizable categories: torts involving physical confrontation or restraint of liberty (assault, battery, false imprisonment, false arrest), and torts involving reputational or communicative harm (libel, slander,

---

[14] 28 U.S.C. § 2680(a).

[15] *See Berkovitz by Berkovitz v. United States*, 486 U.S. 531, 534 (1988); *United States v. Gaubert*, 499 U.S. 315, 322–23 (1991) (holding that the discretionary function exception protects governmental actions and decisions based on considerations of public policy).

misrepresentation, deceit). Tortious interference with contract fits comfortably into neither category. It is a tort of economic harm that involves deliberate and improper conduct directed at a third party's contractual relationship with the plaintiff. Its inclusion in § 2680(h) appears to have been an artifact of the general hesitation to expose the government to liability for any intentional tort in 1946, rather than the product of any considered judgment about the unique characteristics of this particular cause of action.

Moreover, the Supreme Court has itself recognized that the label "intentional tort exception" is "not entirely accurate" as a description of § 2680(h)'s scope, because not every tort listed in § 2680(h) must be committed intentionally in all circumstances.[16] Tortious interference with contract is, by definition, an intentional tort—it requires proof that the defendant acted intentionally and improperly to induce a breach or nonperformance. But the fact that it is intentional does not, standing alone, justify its continued exclusion. Congress recognized as much in 1974 when it brought assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution—all of which are quintessentially intentional torts—back within the FTCA's waiver for law enforcement officers.[17] If the government can be held liable when a law enforcement officer intentionally assaults a citizen, there is no principled reason why it should not be held liable when a federal employee intentionally and improperly destroys a citizen's contractual relationships.

## VI. The Growing Importance of Accountability in Federal Contracting and Regulation

The federal government's role in the national economy has expanded enormously since 1946. The government is the nation's largest purchaser of goods and services, the largest employer, and the most pervasive regulator of private economic activity. Federal employees routinely interact with private contractual relationships in the course of procurement, grant administration, licensing, permitting, inspection, enforcement, and personnel management. The potential for improper interference with private contracts has grown correspondingly.[18]

At the same time, public expectations of government accountability have evolved. The FTCA itself reflects a judgment that the government should be held to the same standard of care as a private employer. Subsequent legislation—including the 1974 law enforcement proviso,[19] the Westfall Act of 1988,[20] and various statutes enhancing accountability for federal employee misconduct—reflects a continuing congressional commitment to ensuring that persons injured by governmental wrongdoing have access to meaningful remedies. Retaining sovereign immunity for tortious interference with

16 *Levin v. United States*, 568 U.S. 503, 507–08 (2013).
17 28 U.S.C. § 2680(h).
18 *See* U.S. Gov't Accountability Off., *A Snapshot of Government-Wide Contracting for FY 2023* (2023), https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2023-interactive-dashboard (reporting approximately $759 billion in federal contract obligations in fiscal year 2023).
19 Act of Mar. 16, 1974, Pub. L. No. 93-253, § 2, 88 Stat. 50.
20 Federal Employees Liability Reform and Tort Compensation Act of 1988 (Westfall Act), Pub. L. No. 100-694, 102 Stat. 4563.

contract is inconsistent with this trajectory and with the reasonable expectations of the public.[21]

## VII. Relationship to Existing ABA Policy

This Resolution is consistent with and builds upon existing ABA policy supporting government accountability and the rule of law. The ABA has previously urged Congress to strengthen remedies for government wrongdoing and to improve accountability mechanisms for federal employees.[22] This Resolution does not reverse or conflict with any existing ABA policy. Rather, it fills a gap by addressing a specific exception to the FTCA's waiver of sovereign immunity that has received insufficient legislative and scholarly attention.

This Resolution advances the ABA's goals of advancing the rule of law and improving the profession.[23] It advances the rule of law by ensuring that the federal government is held to the same standard of accountability as a private person when its employees tortiously interfere with private contractual relationships. It improves the profession by promoting the availability of meaningful legal remedies for a category of wrongful conduct that currently exists in a remedial vacuum, thereby reinforcing public confidence in the fairness and completeness of the legal system.

## VIII. Anticipated Objections

Opponents may argue that removing the interference-with-contract exception could expose the government to a flood of litigation. This concern is speculative and unsupported by available evidence. Tortious interference claims require proof of demanding elements—an existing contract, knowledge, intentional and improper conduct, causation, and damages—that serve as significant filters against frivolous claims. Moreover, the discretionary function exception, the FTCA's administrative exhaustion requirement, the prohibition on punitive damages, and the bench-trial requirement all operate as independent checks on litigation abuse. The 1974 amendment restoring the waiver for six intentional torts committed by law enforcement officers did not produce a flood of frivolous litigation, and there is no reason to believe that removing the interference-with-contract exception would do so either.

Others may contend that the government's unique sovereign functions require it to retain immunity for this tort because governmental action inherently affects private contracts.

---

[21] *See* Gregory C. Sisk, *Litigation with the Federal Government* § 3.06[c] (ALI-ABA 4th ed. 2006); *see also* Cong. Rsch. Serv., R45732, *The Federal Tort Claims Act (FTCA): A Legal Overview* (updated 2024) (describing legislative proposals to expand FTCA liability).

[22] *See* ABA Section of Civil Rights and Social Justice, *Policy*, https://www.americanbar.org/groups/crsj/resources/policy/ (describing decades of ABA resolutions advancing civil rights protections and government accountability); *see also* ABA, *Elimination of Discrimination*, https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/discrimination/ (outlining ABA legislative priorities for strengthening employment discrimination protections).

[23] *See* ABA, *ABA Mission and Goals*, https://www.americanbar.org/about_the_aba/aba-mission-goals/.

This argument conflates routine governmental action with tortious conduct. The discretionary function exception already protects the government from liability for policy decisions that incidentally affect private contracts. Removing the interference-with-contract exception would subject the government to liability only for conduct that is intentional, improper, and not grounded in legitimate policy considerations—conduct that no private person could engage in without facing tort liability. The government's status as sovereign does not entitle its employees to intentionally and improperly destroy private contractual relationships without consequence.

A third potential objection is that retaining the exception protects the public fisc from large damage awards. While the protection of public funds is a legitimate interest, it does not justify blanket immunity for wrongful conduct. The FTCA already contains multiple safeguards: it prohibits punitive damages, requires administrative exhaustion before suit, and places adjudication before a federal judge rather than a jury. These protections adequately limit the government's financial exposure without the blunt instrument of categorical immunity for an entire class of tortious conduct.

## IX. Conclusion

The exception for interference with contract rights in 28 U.S.C. § 2680(h) is an anachronism that deprives injured parties of any remedy when a federal employee intentionally and improperly interferes with their contractual relationships. The rationales that may have supported this exception in 1946 no longer apply. The discretionary function exception provides ample protection for legitimate governmental action, and the FTCA's existing procedural and remedial limitations adequately safeguard the public fisc. The American Bar Association should urge Congress to remove "interference with contract rights" from the § 2680(h) exception list, thereby closing a remedial gap that is inconsistent with fundamental principles of accountability and the rule of law.

Respectfully submitted,

Mario A. Sullivan, Chair
Section of Civil Rights and Social Justice

August 2026

## GENERAL INFORMATION FORM

Submitting Entity: Section of Civil Rights and Social Justice

Submitted By: Mario A. Sullivan, Chair

1. Summary of the Resolution(s).
   This Resolution urges Congress to amend 28 U.S.C. § 2680(h) to remove "interference with contract rights" from the list of claims excepted from the Federal Tort Claims Act's waiver of sovereign immunity, thereby permitting tort claims against the United States for tortious interference with contractual relations committed by federal employees acting within the scope of their employment. The Resolution further urges that, in enacting this amendment, Congress make clear that the discretionary function exception at 28 U.S.C. § 2680(a) continues to shield legitimate governmental policy decisions that may incidentally affect private contractual relations.

2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

   (II) Improve our Profession: The Resolution promotes the availability of meaningful legal remedies for a category of wrongful governmental conduct that currently exists in a remedial vacuum, thereby reinforcing public confidence in the completeness and fairness of the legal system.

   (IV) Advance the Rule of Law: The Resolution ensures that the federal government is held to the same standard of accountability as a private person when its employees tortiously interfere with private contractual relationships, consistent with the FTCA's foundational principle that the government should be liable "in the same manner and to the same extent as a private individual under like circumstances."

3. Approval by Submitting Entity. The Section of Civil Rights and Social Justice approved sponsorship of this Resolution on April 6, 2026.

4. Has this or a similar resolution been submitted to the House or Board previously?
   No.

5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?
   The Association has a longstanding record of advocacy in support of government accountability, meaningful access to remedies for those injured by government action, and the elimination of unjustified barriers to the vindication of legal rights. Relevant existing policies include the Association's support for strengthened employment discrimination remedies, including the Paycheck Fairness Act and enhanced protections under the Equal Pay Act (10A107), its adoption of amended Model Rule 8.4 prohibiting harassment and discrimination in conduct related to the practice of law

(16A109), and its broader advocacy for the elimination of discrimination across all employment settings regardless of employer type.

Adoption of this Resolution would not reverse, supersede, or conflict with any existing Association policy. Rather, it would fill a gap in existing policy by specifically targeting the retention of absolute sovereign immunity for tortious interference with contract under 28 U.S.C. § 2680(h)—an immunity that is increasingly difficult to justify given the federal government's pervasive role in procurement, grant administration, licensing, permitting, and other activities that routinely intersect with private contractual relationships. While existing ABA policies address discrimination remedies and government accountability in broad terms, no prior resolution has directly confronted the anomaly of retaining immunity for this particular tort at a time when Congress has progressively expanded the FTCA's waiver of sovereign immunity in other areas, including through the 1974 law enforcement proviso.

6. If this is a late report, what urgency exists which requires action at this meeting of the House? No.

7. Status of Legislation.
   None.

8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.
   If adopted, the Section of Civil Rights and Social Justice will work with the ABA Governmental Affairs Office to transmit the policy to the appropriate congressional committees. The Section will also seek opportunities to present the policy in congressional testimony, to include the policy in amicus briefs as appropriate, and to coordinate with tort reform organizations, civil liberties organizations, and other stakeholders in support of legislation consistent with the Resolution.

9. Cost to the Association.
   None.

10. Disclosure of Interest.
    N/A.

11. Referrals.
    Business Law Section
    Center for Professional Responsibility
    Coalition on Racial And Ethnic Justice
    Commission on Domestic and Sexual Violence
    Commission on Hispanic Legal Rights & Responsibilities
    Commission on Racial and Ethnic Diversity in the Profession
    Commission on Sexual Orientation and Gender Identity
    Commission on Women in the Profession
    Criminal Justice Section

Cybersecurity Legal Task Force
Diversity, Equity, and Inclusion Advisory Council
Division for Public Education
Government and Public Lawyers Sector Lawyers Division
Hispanic National Bar Association
International Law Section
Judicial Division
Law Student Division
Real Property, Probate and Trust Law Section
Science and Technology Law Section
Section of Litigation
Section of Administrative Law and Regulatory Practice
Section of Environment, Energy, and Resources
Section of State, Local and Tribal Government Law
Section of Labor and Employment Law
Senior Lawyers Division
Solo, Small Firm and General Practice Law Division
Tort Trial and Insurance Practice Section
Young Lawyers Division
National Asian Pacific American Bar Association
National LGBTQ+ Bar Association
National Native American Bar Association
National Bar Association

12. Certification of Compliance. All resolutions and reports submitted for consideration by the House of Delegates must be original work, with proper cites and the ability to use the content contained therein. All cites in the resolution and report must be checked by the submitting person or entity for accuracy prior to submission. Finally, if material from another source is cited in a resolution or report, there must be both proper attribution and the legal ability to use the information. Please name the person who verifies that these requirements have been met for the resolution and report submitted.

    Jordan D. Howlette

13. Name and Contact Information (Prior to the Meeting)

Paula Shapiro, Chief Counsel & Section Director
Section of Civil Rights and Social Justice
860-508-5550
paula.shapiro@americanbar.org

Jordan D. Howlette
202-921-6005
jordan@justlyprudent.com

14. Name and Contact Information.

Wendy K. Mariner, CRSJ Section Delegate
616-460-2284
wmariner@bu.edu

Paul R.Q. Wolfson, CRSJ Section Delegate
202-288-7008
prqwolfson@gmail.com

## EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution urges Congress to amend 28 U.S.C. § 2680(h) to remove “interference with contract rights” from the list of claims excepted from the Federal Tort Claims Act’s waiver of sovereign immunity. This amendment would permit tort claims against the United States for tortious interference with contractual relations committed by federal employees acting within the scope of their employment, on the same terms as claims against a private employer. The Resolution further urges Congress to clarify that the discretionary function exception at § 2680(a) continues to protect legitimate governmental policy decisions that may incidentally affect private contracts.

2. Summary of the issue that the resolution addresses.

Under current law, the FTCA’s waiver of sovereign immunity does not extend to claims for interference with contract rights. When a federal employee, acting within the scope of employment, intentionally and improperly interferes with a private person’s contractual relationship, the injured party has no remedy: the FTCA bars suit against the United States, and the Westfall Act immunizes the individual employee from personal liability. This creates a complete remedial vacuum. The exception was adopted in 1946 based on rationales that no longer apply, and Congress has never revisited it despite having amended § 2680(h) in 1974 to restore the waiver for six other intentional torts committed by law enforcement officers. The discretionary function exception at § 2680(a) already provides comprehensive protection for legitimate governmental policy decisions, making the separate interference-with-contract exception unnecessary.

3. Please explain how the proposed policy position will address the issue.

Removing “interference with contract rights” from the § 2680(h) exception list would close the remedial gap and permit injured parties to bring FTCA claims against the United States for tortious interference with contractual relations committed by federal employees within the scope of their employment. The discretionary function exception would continue to protect the government from liability for regulatory, procurement, licensing, enforcement, and other policy-grounded decisions that incidentally affect private contracts. The amendment would thus target only improper conduct—conduct that would be tortious if committed by a private person and that is not shielded by the discretionary function exception.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None.