No. 06-___

IN THE

Supreme Court of the United States

Kimberly J. Goodin,

Petitioner,

v.

United States Postal Inspection Service.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Mark D. Kelly
KLEMP & STANTON, P.L.L.P.
400 Exchange Building
26 East Exchange St.
St. Paul, MN 55101

Pamela S. Karlan
Jeffrey L. Fisher
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305

Amy Howe
(Counsel of Record)
Kevin K. Russell
HOWE & RUSSELL, P.C.
4607 Asbury Pl. NW
Washington, DC 20016
(202) 237-7543

Thomas C. Goldstein
AKIN, GUMP, STRAUSS, HAUER
& FELD LLP
1333 New Hampshire
Ave., NW
Washington, DC 20036

August 17, 2006

QUESTION PRESENTED

Whether the Contract Disputes Act of 1978, 41 U.S.C. 601 et seq., impliedly repeals the independent grant of jurisdiction in statutes providing that governmental entities may sue or be sued in federal district court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner Kimberly J. Goodin respectfully petitions for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Eighth Circuit (Pet. App. 1a-6a) is published at 444 F.3d 998. The district court's decision (Pet. App. 7a-14a) is published at 393 F. Supp. 2d 869.

JURISDICTION

The court of appeals issued its decision on April 19, 2006. On July 5, 2006, Justice Alito extended the time to file this petition to and including August 17, 2006. App. 06A10. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

RELEVANT STATUTORY PROVISIONS

39 U.S.C. 401(1), enacted as part of the Postal Reorganization Act (PRA) of 1970, provides in relevant part:

> The Postal Service shall have the following general powers: (1) to sue and be sued in its official name.

39 U.S.C. 409(a), enacted as part of the Postal Reorganization Act, provides in relevant part:

> Except as provided in section 3628 of this title, the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service. Any action brought in a State court to which the Postal Service is a party may be removed to the appropriate United States district court under the provisions of chapter 89 of title 28.

Section 2 of the Contract Disputes Act (CDA) of 1978, 41 U.S.C. 601(2), provides in relevant part:

> As used in this Act—the term "executive agency" means * * * the United States Postal Service."

Section 3 of the CDA, 41 U.S.C. 602(a), provides in relevant part:

> Unless otherwise specifically provided herein, this Act applies to any express or implied contract * * * entered into by an executive agency for—
>
> (1) the procurement of property, other than real property in being;
>
> (2) the procurement of services;
>
> (3) the procurement of construction, alteration, repair or maintenance of real property; or,
>
> (4) the disposal of personal property.

Section 10 of the CDA, 41 U.S.C. 609(a)(1), provides in relevant part:

> [I]n lieu of appealing the decision of the contracting officer under section 6 to an agency board, a contractor may bring an action directly on the claim in the United States Claims Court [United States Court of Federal Claims], notwithstanding any contract provision, regulation, or rule of law to the contrary.

The Little Tucker Act, as amended by the CDA, 28 U.S.C. 1346(a), provides in relevant part:

> The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of: * * *
>
> > Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded * * * upon any express or implied contract with the United States * * * except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States * * * which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978.

STATEMENT

1. The Postal Reorganization Act (PRA) of 1970, 39 U.S.C. 409(a), provides district courts with "original but not exclusive jurisdiction over all actions brought by or against the Postal Service." Without mentioning this provision, the Contract Disputes Act (CDA) of 1978, 41 U.S.C. 601 et seq., establishes an administrative mechanism for raising contract disputes with federal agencies (including the Postal Service) generally and provides a means of judicial review of such claims in the United States Court of Federal Claims. The question in this case is whether the CDA impliedly repealed the pre-existing independent grant of jurisdiction to the district courts over contract disputes with the Postal Service.

1. In December 2001, petitioner Kimberly Goodin ("petitioner") read an article in a local Coon Rapids, Minnesota newspaper regarding a string of recent armed robberies in the area, including an assault on a postal worker. Pet. App. 2a. The article – which included a sketch of the suspect – reported that respondent U.S. Postal Inspection Service was offering a reward of up to $50,000 "for information leading to the arrest and conviction of the suspect." *Ibid.*; *id.* 8a.

Petitioner contacted the local police department and identified the suspect, who was arrested and charged and subsequently pled guilty. Pet. App. 2a. Petitioner then applied for the reward offered by respondent. She never received any payment, however. *Ibid.*[1]

2. Petitioner subsequently initiated this suit in the U.S. District Court for the District of Minnesota, alleging – inter

---

[1] Respondent contended (and petitioner denied) that petitioner's application lacked a mandatory personal history form and photograph. See Pet. App. 2a. However, that dispute is not at issue here.

alia – that respondent had breached its contract with her.[2] She contended that jurisdiction in that court was appropriate pursuant to the Postal Reorganization Act, 39 U.S.C. 101 et seq., which provides both that the Postal Service may "sue and be sued in its official name," *id.* § 401(1), and that federal district courts "shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service," *id.* § 409(a).

Respondent moved to dismiss petitioner's claim, alleging that the district court lacked subject matter jurisdiction and that the case instead must be filed in the United States Court of Federal Claims. In support, respondent relied on the Contract Disputes Act of 1978, 41 U.S.C. 601-13. That statute – which applies to specified "express or implied contract[s] entered into by an executive agency," *id.* § 602(a), including the Postal Service, see *id.* § 601(2) – outlines a set of procedures by which a government contractor may challenge government contracting decisions. As relevant here, a contractor may appeal the decision of a contracting officer either to an agency board of contract appeals, see *id.* § 606, or – "notwithstanding any contract provision, regulation, or rule of law to the contrary" – directly to the United States Court of Federal Claims, see *id.* § 609.

The district court dismissed the case, agreeing with respondent that the CDA divested it of subject matter jurisdiction over petitioner's breach-of-contract claim.[3] Pet. App. 14a. The court reasoned that the "plain language of the CDA" "provides that the Federal Court of Claims has jurisdiction over 'any * * * implied contract * * * entered into

---

[2] Respondent U.S. Postal Inspection Service is a division of the U.S. Postal Service. See http://www.usps.com/postalinspectors/missmore.htm (visited Aug. 14, 2006).

[3] The district court also dismissed petitioner's fraudulent misrepresentation claim (which is not at issue here) for lack of subject matter jurisdiction. See Pet. App. 10a.

by an executive agency for . . . the procurement of services,'" and that petitioner's claim was such an implied contract. *Ibid.*

3. On appeal, the Eighth Circuit affirmed. It rejected petitioner's claim that the PRA provides an independent basis for district court jurisdiction over her breach-of-contract claim. The court of appeals acknowledged that the Ninth Circuit would allow petitioner's claim to proceed but rejected that circuit's rule. Pet. App. 5a (citing *In re Liberty Construction*, 9 F.3d 800 (1993)). Instead, it followed decisions of the Sixth and District of Columbia Circuits holding that a "precisely drawn, detailed statute" such as the CDA preempted other statutory provisions – similar to those in the PRA – that provided an independent basis for district court jurisdiction. See *id.* 4a-5a (citing *Campanella* v. *Commerce Exchange Bank*, 137 F.3d 885 (CA6 1998); *A&S Council Oil Co., Inc.* v. *Lader*, 56 F.3d 234 (CADC 1995)). Both of those courts, the Eighth Circuit explained, "emphasized that if Congress had intended sue and be sued clauses to enable parties to escape the exclusive jurisdiction provided by the CDA and sue in federal district court, it would not have needed to specify in 41 U.S.C. § 602(b) that disputes over some contracts formed by the Tennessee Valley Authority (which has a sue and be sued clause) are exempted from the CDA." *Ibid.* The court concluded that deeming the Court of Federal Claims jurisdiction to be exclusive is "consistent with the CDA's purpose of 'centralizing the process of contract-dispute resolution and thus making it more efficient,'" particularly insofar as the CDA is "intended 'both to limit the waiver of sovereign immunity and to submit government contract issues to forums that have specialized knowledge and experience.'" *Id.* 5a-6a (quoting *Campanella*, 137 F.3d at 890; *United States* v. *Kasler Elec. Co.*, 123 F.3d 341, 346 (CA6 1997)).

4. This petition followed.

REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law on which the circuits are avowedly intractably divided. In several statutes, Congress has conferred on federal district courts jurisdiction over suits against certain quasi-governmental agencies, subjecting them to suit in federal district courts as if they were private corporations. More recently, Congress enacted the Contract Disputes Act, which extends to quasi-governmental entities such as the Postal Service but is directed principally at contract disputes with traditional federal agencies. There is a longstanding, widely recognized, and deeply entrenched conflict among seven circuits regarding whether the Contract Disputes Act impliedly repealed the independent grants of jurisdiction for suits against these quasi-governmental entities, vesting jurisdiction over claims such as petitioner's exclusively in the Court of Federal Claims. Five courts of appeals – including the Eighth Circuit in this case – have construed the CDA to divest district courts of jurisdiction over matters within the Act's purview. Two other circuits reject that interpretation, holding instead that the CDA is merely a non-exclusive grant of federal jurisdiction that does not preclude district court jurisdiction over a contract covered by the CDA when there is an independent basis for that jurisdiction.

I. The Question Presented Is the Subject of an Irreconcilable Circuit Conflict.

1. The circuit conflict over whether the CDA divests district courts of jurisdiction over matters within the Act's purview has been widely recognized. In *Licata* v. *United States Postal Service*, 33 F.3d 259 (CA3 1994), for example, the Third Circuit noted that "[t]wo circuits, after careful consideration, have held that where there is an independent basis for district court jurisdiction (as there is for claims against the Postal Service), both the Contract Disputes Act and the Tucker Act are irrelevant," *id.* at 264 (citing *In re*

Liberty Const., 9 F.3d 800 (CA9 1993), and *Marine Coatings of Alabama, Inc.* v. *United States*, 932 F.2d 1370, 1377 (CA11 1991)). On the other hand, the Third Circuit observed, other courts have concluded that the CDA repealed all other pre-existing grants of original jurisdiction over contract claims subject to the CDA. 33 F.3d at 264 n.6 (citing, *e.g.*, *Hayes* v. *United States Postal Service*, 859 F.2d 354, 356 (CA5 1988)).[4]

The Ninth and Eleventh Circuits interpret the CDA as a non-exclusive grant of federal jurisdiction and on that basis permit plaintiffs to file suit in federal district court (rather than in the Court of Federal Claims) when there is an alternative, independent basis for district court jurisdiction. In *Wright* v. *United States Postal Service*, 29 F.3d 1426, 1428 (CA9 1994), the Ninth Circuit held that the CDA does not preempt federal district courts' historic jurisdiction under the Postal Reorganization Act. The court began by noting that, as a general matter, "[w]hen Congress establishes * * * an agency, authorizes it to engage in commercial and business transactions with the public, and permits it to 'sue and be sued,' it cannot be lightly assumed that restrictions on that authority are to be implied" (quoting *Franchise Tax Bd.* v. *United States Postal Service*, 467 U.S. 512, 517-18 (1984)) (second alteration in original). Turning to the specific question whether the CDA supersedes the PRA's independent grant of district court jurisdiction, the court deemed its prior decision in *In re Liberty Construction*, 9 F.3d 800 (1993), dispositive. 29 F.3d at 1430. That case involved a claim brought by a contractor against the Small Business Administration under the "sue and be sued" provision of the Small Business Act, 15 U.S.C. 634(b)(1).[5] The district court

[4] The Third Circuit itself ultimately did not decide the question in *Licata*. 33 F.3d at 264 n.6.

[5] The statute provides, in relevant part, that the Administrator of the SBA may "sue and be sued * * * in any United States District Court, and jurisdiction is conferred upon such District

dismissed for lack of subject matter jurisdiction, but the Ninth Circuit reversed. In holding that the contractor's claim could proceed in the district court, the court of appeals relied on its prior precedent holding that jurisdiction under the Tucker Act – which vested jurisdiction over contract claims against the government in the Court of Claims – "is not exclusive where other statutes independently confer jurisdiction and waive sovereign immunity." 9 F.3d at 801 (quoting *Munoz* v. *Small Business Admin.*, 644 F.2d 1361, 1364 (CA9 1981)). The court rejected the government's argument that the CDA had subsequently divested district courts of jurisdiction over all contract claims within its scope, explaining that although the CDA "withdrew district court jurisdiction under the Tucker Act over contract claims for damages not exceeding $10,000," it "otherwise left existing jurisdiction intact." *Ibid.* In *Wright*, the court found no basis for distinguishing between the jurisdictional grant for the SBA and the Postal Service. 29 F.3d at 1430. [6] Accordingly, "[a]pplying *Liberty Construction* and the Supreme Court's admonition that the PRA's waiver of immunity be 'liberally construed,'" the Ninth Circuit concluded that the CDA does not preempt either contractor or subcontractor actions against the USPS when there is an independent basis for jurisdiction over such actions. *Ibid.* (quoting *Franchise Tax Bd.*, 467 U.S. at 517).

The Eleventh Circuit similarly holds that the CDA does not foreclose reliance on other statutes conferring jurisdiction on the federal district courts. In *Marine Coatings of Alabama, Inc.* v. *United States*, 932 F.2d 1370, 1377 (1991),

---

Court to determine controversies without regard to the amount involved in the controversy."

[6] In its Eighth Circuit brief in this case, respondent similarly acknowledged that, for purposes of the CDA, the reasoning of courts applying the majority rule to claims under the SBA is "fully applicable" to claims under the PRA, as nothing in those cases "turned on the particular wording of the sue-or-be-sued clause at issue." Resp. C.A. Br. 15.

the court of appeals rejected the government's argument that the CDA superseded provisions of the Maritime Lien Act, which – when read together with the Suits in Admiralty Act and the Public Vessels Act – provided for district court jurisdiction over the plaintiff's claim. The court of appeals found "no reasonable justification" for allowing the CDA to narrow the scope of the sovereign immunity waiver provided by the SAA and PVA; to the contrary, the court reasoned, to "impose external limits on an express waiver of sovereign immunity" such as those of the SAA and PVA "would frustrate Congress's purpose in enacting the provisions." *Ibid.* Thus, the court of appeals concluded, although the CDA provided a waiver of sovereign immunity, "there is no need to apply [it] if another method of bringing suit is available." *Ibid.*

In contrast to the holdings of the Ninth and Eleventh Circuits, the Eighth Circuit in this case and four other courts of appeals hold that the CDA categorically strips district courts of jurisdiction over all claims falling under its purview, even when there would otherwise be an independent basis for district court jurisdiction. See Pet. App. 5a-6a; *A&S Council Oil Co.* v. *Lader*, 56 F.3d 234, 241-42 (CADC 1995); *Campanella* v. *Commerce Exchange Bank*, 137 F.3d 885, 890-91 (CA6 1998); *United States of America* v. *J & E Salvage Co.*, 55 F.3d 985, 987 (CA4 1995); *Hayes* v. *United States Postal Service*, 859 F.2d 354 (CA5 1988). Cf. *Up State Federal Credit Union* v. *Walker*, 198 F.3d 372, 373 (CA2 1999) (per curiam) (suggesting that court's agreement).

The split is sufficiently broad that judges within the same district have adopted conflicting positions. Compare *Sharon Hill Chester Pike, L.P.* v. *United States Postal Service*, 886 F. Supp. 487 (E.D. Pa. 1995) (holding that CDA does not preclude district court jurisdiction under the PRA) with *Fortna, Inc.* v. *United States Postal Service*, No. 00-3081, 2000 U.S. Dist. LEXIS 19179 (E.D. Pa. Jan. 2, 2001) (following majority rule); *Eagle Fence Co.* v. *V.S. Electric, Inc.*, 324 F. Supp. 2d 621 (E.D. Pa. 2004) (same).

2. Certiorari is also warranted because the circuit split is entrenched. The split has existed at least since 1995, see *A&S Council Oil Co.*, 56 F.3d at 241 (CADC) (holding that CDA vested Court of Federal Claims with exclusive jurisdiction over claims within Act's purview) with *In re Liberty Construction*, 9 F.3d at 801 (CA9) (CDA does not divest district courts of jurisdiction when there is an independent basis for jurisdiction), and is only growing more entrenched with time, as courts of appeals – including the Eighth Circuit in this case – acknowledge the divergent rules of circuits such as the Ninth but nonetheless follow the majority rule. See, *e.g.*, Pet. App. 5a; *Campanella*, 137 F.3d at 891.

Nor would there be any benefit to permitting the question presented to percolate further in the lower courts. To the contrary, the issues have been sufficiently well ventilated that many courts considering the question presented for the first time no longer engage in any independent analysis, opting instead to merely acknowledge the divergent holdings of the courts of appeals and then follow the courts on a particular side of the circuit split. Their view is that "[n]othing would be gained by spilling more ink here." *Twin Cities Air Service* v. *United States Postal Service*, 195 F. Supp. 2d 242, 243 (D. Me. 2002). See also, *e.g.*, *Eagle Fence Co.*, 324 F. Supp. 2d at 626; *Fortna, Inc.*, 2000 U.S. Dist. LEXIS 19179, at *3.

3. This circuit split is untenable because the question presented arises with respect to several statutory schemes. In addition to the Postal Service and the Small Business Administration, Congress has enacted similar sue-and-be-sued clauses and independent bases for jurisdiction with regard to other executive agencies. See, *e.g.*, 29 U.S.C. 1302(b) (Pension Benefit Guaranty Corporation); 12 U.S.C. 635(a)(1) (Export-Import Bank).

These quasi-governmental entities, like any ordinary large corporation, routinely enter into countless commercial and other contracts, predictably giving rise to contract disputes and, therefore, the jurisdictional question presented

by this petition.[7] The result of the conflict moreover is that in some circuits private parties to these contracts may choose to litigate their contract claims in either federal district courts or the Court of Federal Claims, while in other circuits similarly situated parties may bring such claims only in the Court of Federal Claims. Indeed, the combination of the unsettled nature of the law and the CDA's exhaustion requirements can lead to particularly harsh consequences, as courts in several cases have determined that the plaintiffs' claims fell within the scope of the CDA and then dismissed the cases, rather than transferring them to the Court of Federal Claims, on the ground that the plaintiff "failed to exhaust the jurisdictional remedies required for relief under the CDA." See, *e.g.*, *A&S Council*, 56 F.3d at 242; *1-10 Industry Associates, Inc.*, 133 F. Supp. 2d 194, 197 (E.D.N.Y. 2001) (same).

4. Finally, this case is an ideal vehicle to consider the question presented, which was squarely raised to, and directly addressed by, the Eighth Circuit. Moreover, because petitioner's breach-of-contract claim is her only remaining claim, see Pet. App. 3a, the question presented is outcome determinative in her case.

II. The CDA Does Not Divest District Courts of Jurisdiction When There Is an Independent Basis for Jurisdiction.

Certiorari is also warranted because the Eighth Circuit's holding that the CDA provides the exclusive remedial scheme for government contract claims falling within its scope is incorrect.

1. There is no question that the sole source of federal court jurisdiction over most contract disputes with ordinary federal agencies is the Tucker Act, as amended by the

[7] The Postal Service alone serves over 7.5 million customers daily at more than 37,000 Post Offices nationwide. U.S. Postal Service, *Postal Facts 2006*, http://www.usps.com/communications/organization/postalfacts.htm.

Contract Disputes Act of 1978 (CDA). Congress has, however, seen fit to address separately suits against certain quasi-governmental entities, such as the Postal Service and the Small Business Administration. In keeping with Congress's general determination that such entities should be treated more like ordinary corporations than like federal agencies, Congress waived their sovereign immunity from contract suits and expressly subjected them to the jurisdiction of the federal district courts. See 39 U.S.C. 409(a). The PRA thus provides federal district courts with "original but not exclusive jurisdiction over all actions brought by or against the Postal Service." *Ibid.* Nothing in the text of the CDA expressly repeals that grant of jurisdiction. This Court has "'repeatedly stated * * * that absent a clearly established congressional intention, repeals by implication are not favored. An implied repeal will only be found where provisions in two statutes are in irreconcilable conflict, or where the latter Act covers the whole subject of the earlier one and is clearly intended as a substitute.'" *Lockhart* v. *United States*, 126 S. Ct. 699, 704 (2005) (citation omitted); see also *Ruckleshaus* v. *Monsanto Co.*, 467 U.S. 986, 1016-19 (1984) (declining to find implied partial repeal of Tucker Act jurisdiction). Nothing in the language of the CDA satisfies that standard. To the contrary, the text of the CDA indicates that the Act was merely intended to provide a non-exclusive avenue to federal court jurisdiction.

First, Congress's failure to repeal Section 409(a) of the PRA plainly was not an oversight, as the CDA *did* expressly address the question of federal court jurisdiction, but merely undertook a much more limited revision of the law. As the Ninth Circuit noted in *In re Liberty Construction*, 9 F.3d 800, 801 (1993), Congress in the CDA specifically withdrew one discrete independent grant of district court jurisdiction by amending the Little Tucker Act to divest district courts of their concurrent jurisdiction over contract claims not exceeding $10,000. The fact that Congress expressly withdrew one grant of district court jurisdiction undermines

any claim that it simultaneously withdrew another grant *sub silentio*. To the contrary, by leaving undisturbed the separate jurisdictional provisions of the PRA and similar statutes, Congress plainly intended a different treatment for quasi-governmental agencies such as the Postal Service. That these entities were previously subject to separate legislative treatment – including the creation of separate special jurisdictional provisions – underscores the unlikelihood that Congress's special treatment of those entities under the CDA was accidental.

Indeed, when Congress has intended to create a comprehensive remedial scheme that supersedes *all* other jurisdictional grants or remedies, it has done so with explicit statutory language. For example, in the Federal Tort Claims Act, Congress clearly identified the circumstances in which remedies provided by that act would be exclusive. See, *e.g.*, 28 U.S.C. 2679(a) ("The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive."). See also, *e.g.*, 46 U.S.C. Appx. 745 (providing that in particular admiralty suits, "where a remedy is provided by this Act, it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States"); 33 U.S.C. 905(a) (providing for exclusive employer liability in covered longshoremen cases).[8]

---

[8] To be sure, the CDA does provide that a contracting officer's decision "shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency, unless an appeal or suit is timely commenced as authorized by this chapter." See 41 U.S.C. 605(b). Despite this provision and others in the CDA, courts following the majority rule have nonetheless explained that "it might still be the case that * * * sue-and-be-sued clause[s] permitted review of contract disputes outside the CDA framework,"

Although courts applying the majority rule place considerable weight on the fact that certain TVA contracts are excluded from the CDA, see, *e.g.*, *A&S Council*, 56 F.3d at 242 (citing 41 U.S.C. 602(b)), such an exclusion does not lead inexorably to the conclusion that the CDA otherwise establishes an exclusive remedial scheme for all claims falling within its scope. To the contrary, although the Tucker Act also excludes claims relating to the TVA from the jurisdiction of the Court of Federal Claims, see 28 U.S.C. 1491(c) ("Nothing herein shall be construed to give the United States Court of Federal Claims jurisdiction * * * of any action against, or founded on conduct of, the Tennessee Valley Authority * * *."), this Court has held that the Tucker Act does not provide an exclusive avenue to federal court jurisdiction. See *Bowen* v. *Massachusetts*, 487 U.S. 879, 910 n.48 (1988) (explaining that although it "is often assumed that the Claims Court has exclusive jurisdiction of Tucker Act claims for more than $10,000," in fact "that court's jurisdiction is 'exclusive' only to the extent that Congress has not granted any other court authority to hear the claims that may be decided by the Claims Court").

2. The CDA's legislative history is similarly devoid of any expression of congressional intent to supplant all of the preexisting remedies available to persons such as petitioner. To the contrary, the legislative history of the CDA indicates that it was in fact enacted to provide government contractors with *expanded* access to judicial review and to streamline the dispute resolution process. See, *e.g.*, S. Rep. No. 95-1118, reprinted in 1978 U.S.C.C.A.N. (92 Stat.) 5235, 5249; see also Lauren Springer, *Choice of Forum From a Contractor's Perspective*, 37 AM. U.L. REV. 1237, 1241 (1988); Samuel J. Rob, *Contractor Assertion of Claims Under the Contracts*

---

and their reasoning has instead hinged on the specific carve-out for some claims against the TVA. See, *e.g.*, *A&S Council*, 56 F.3d at 242. However, as explained *infra*, the reliance on the TVA exemption is inapposite.

Disputes Act, 133 MIL. L. REV. 141, 142 (1991). Specifically, in the decades prior to the enactment of the CDA, contractors who wished to appeal a contracting officer's decision did not have direct access to the Court of Claims, but were instead required to proceed first to the agency's board of contract appeals; only after the board had ruled on the contractors' claims could they then appeal to the Court of Claims. See Springer, *supra*, at 1238-39. The CDA was thus intended merely to expand the rights of government contractors, providing them with the option of direct access to the Court of Claims in cases in which they otherwise lacked an independent basis for federal court jurisdiction.[9] It certainly was not intended to restrict the rights of persons such as petitioner, who already had an independent basis for district court jurisdiction over their claims.

3. Giving effect to the unrepealed jurisdictional provisions of the PRA is not incompatible with the general purposes animating the CDA. Congress has provided alternative sources of jurisdiction for only a handful of special quasi-governmental agencies outside of the framework of the CDA. The vast majority of contract disputes with federal executive agencies generally are governed solely by the jurisdictional regime of the CDA. The special nature of quasi-

[9] Effective January 6, 2007, the Contract Disputes Act has been amended as it applies to the Postal Service. The effect of the amendment is apparently to expressly authorize appeals from contracting officers not only directly to the Court of Federal Claims but also alternatively to the Postal Service Board of Contract Appeals and then to the Federal Circuit, and also to delete the Postal Service from the definition of executive agency. See Pub. L. No. 109-163, Div. A, Title VIII, Subtitle E, § 847(d)(1)(A) & (d)(2)(B), 119 Stat. 3393. Although the precise effect of the amendment is unclear, it does not affect the question presented as it relates to the Postal Service and petitioner's case, but in any event has no effect on the question presented with regard to other claims against executive agencies for which there is an independent basis for district court jurisdiction.

governmental agencies like the Postal Service, however, has led Congress to single those entities out for special statutory treatment. The separate jurisdictional provision of the PRA was part of Congress's effort to ensure that the Postal Service would be "run more like a business," leading this Court to "presume that the [Postal Service's] liability is the same as that of any other business." *Franchise Tax Bd.* v. *United States Postal Service*, 467 U.S. 512, 519-20 (1984). Of course, contract disputes with "any other business" are conducted in the federal district courts, rather than the Court of Federal Claims.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Mark D. Kelly
KLEMP & STANTON, P.L.L.P.
400 Exchange Building
26 East Exchange St.
St. Paul, MN 55101

Pamela S. Karlan
Jeffrey L. Fisher
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305

Amy Howe
(Counsel of Record)
Kevin K. Russell
HOWE & RUSSELL, P.C.
4607 Asbury Pl. NW
Washington, DC 20016
(202) 237-7543

Thomas C. Goldstein
AKIN, GUMP, STRAUSS, HAUER
& FELD LLP
1333 New Hampshire
Ave., NW
Washington, DC 20036

August 17, 2006