Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

STAUB *v.* PROCTOR HOSPITAL

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 09–400. Argued November 2, 2010—Decided March 1, 2011

While employed as an angiography technician by respondent Proctor Hospital, petitioner Staub was a member of the United States Army Reserve. Both his immediate supervisor (Mulally) and Mulally's supervisor (Korenchuk) were hostile to his military obligations. Mulally gave Staub disciplinary warning which included a directive requiring Staub to report to her or Korenchuk when his cases were completed. After receiving a report from Korenchuk that Staub had violated the Corrective Action, Proctor's vice president of human resources (Buck) reviewed Staub's personnel file and decided to fire him. Staub filed a grievance, claiming that Mulally had fabricated the allegation underlying the warning out of hostility toward his military obligations, but Buck adhered to her decision. Staub sued Proctor under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which forbids an employer to deny "employment, reemployment, retention in employment, promotion, or any benefit of employment" based on a person's "membership" in or "obligation to perform service in a uniformed service," 38 U. S. C. §4311(a), and provides that liability is established "if the person's membership . . . is a motivating factor in the employer's action," §4311(c). He contended not that Buck was motivated by hostility to his military obligations, but that Mulally and Korenchuk were, and that their actions influenced Buck's decision. A jury found Proctor liable and awarded Staub damages, but the Seventh Circuit reversed, holding that Proctor was entitled to judgment as a matter of law because the decisionmaker had relied on more than Mulally's and Korenchuk's advice in making her decision.

Held:

1. If a supervisor performs an act motivated by antimilitary ani-

mus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under USERRA. In construing the phrase "motivating factor in the employer's action," this Court starts from the premise that when Congress creates a federal tort it adopts the background of general tort law. See, *e.g., Burlington N. & S. F. R. Co.* v. *United States,* 556 U. S. ___, ___. Intentional torts such as the one here "generally require that the actor intend 'the consequences' of an act,' not simply 'the act itself.' " *Kawaauhau* v. *Geiger*, 523 U. S. 57, 61–62. However, Proctor errs in contending that an employer is not liable unless the *de facto* decisionmaker is motivated by discriminatory animus. So long as the earlier agent intended, for discriminatory reasons, that the adverse action occur, he has the scienter required for USERRA liability. Moreover, it is axiomatic under tort law that the decisionmaker's exercise of judgment does not prevent the earlier agent's action from being the proximate cause of the harm. See *Hemi Group, LLC* v. *City of New York*, 559 U. S. 1, ___. Nor can the ultimate decisionmaker's judgment be deemed a superseding cause of the harm. See *Exxon Co., U. S. A.* v. *Sofec, Inc.,* 517 U. S. 830, 837. Proctor's approach would have an improbable consequence: If an employer isolates a personnel official from its supervisors, vests the decision to take adverse employment actions in that official, and asks that official to review the employee's personnel file before taking the adverse action, then the employer will be effectively shielded from discriminatory acts and recommendations of supervisors that were designed and intended to produce the adverse action. Proctor also errs in arguing that a decisionmaker's independent investigation, and rejection, of an employee's discriminatory animus allegations should negate the effect of the prior discrimination. Pp. 4–10.

2. Applying this analysis here, the Seventh Circuit erred in holding that Proctor was entitled to judgment as a matter of law. Both Mulally and Korenchuk acted within the scope of their employment when they took the actions that allegedly caused Buck to fire Staub. There was also evidence that their actions were motivated by hostility toward Staub's military obligations, and that those actions were causal factors underlying Buck's decision. Finally, there was evidence that both Mulally and Korenchuk had the specific intent to cause Staub's termination. The Seventh Circuit is to consider in the first instance whether the variance between the jury instruction given at trial and the rule adopted here was harmless error or should mandate a new trial. Pp. 11–12.

560 F. 3d 647, reversed and remanded.

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SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. ALITO, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined. KAGAN, J., took no part in the consideration or decision of the case.