

No. 08-1214

IN THE
Supreme Court of the United States

GRANITE ROCK COMPANY,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS &
TEAMSTERS LOCAL 287,
Respondents.

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

**BRIEF FOR RESPONDENT INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

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QUESTION PRESENTED FOR REVIEW

Section 301 of the Labor Management Relations Act of 1947 (“LMRA”), 29 U.S.C. § 185(a), authorizes “[s]uits for violation of contracts between an employer and a labor organization.” The question in this case is whether—in addition to providing for breach of contract claims against the parties to a labor contract—Section 301 also provides tort claims against non-parties for wrongful interference with one of the parties’ performance under the contract.

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**BRIEF FOR RESPONDENT INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

STATEMENT OF THE CASE

The abbreviated discussion in Petitioner Granite Rock's brief of the procedural history of this case conspicuously omits information relevant to the merits of Petitioner's current claim.

This case arises from a labor dispute between Teamsters Local 287 and Granite Rock regarding the re-negotiation of their collective bargaining agreement ("CBA") that expired in April 2004. JA 307-08. After the parties were unable to resolve their differences, Local 287's members struck in June 2004. JA 308-09.

On July 2, 2004, the parties reached a tentative agreement regarding some or all of the terms of a new CBA. JA 309-10. The parties also discussed a “back-to-work” agreement aimed at resolving various disputes arising from the strike, but deferred finalizing its terms. JA 310. Such an agreement was never concluded. JA 312-13.

On July 2, Local 287 agreed to remove its pickets and present the tentative CBA to its members for ratification. Granite Rock alleges, and Local 287 denies, that the CBA was ratified that day. JA 310-11; *see* JA 367. Local 287 resumed its strike on July 6. JA 311-13.¹

On July 9, 2004, invoking Section 301, Granite Rock filed a breach of contract action against only Local 287. Dkt. #1.² The initial complaint alleged that by remaining on strike after July 2, Local 287 violated the no-strike provision in the new CBA that Granite Rock claims was ratified on that date. JA 62-67. Granite Rock subsequently filed its First Amended Complaint on July 23, 2004, and sought a temporary restraining order, again only against Local 287. JA 70-79; Dkt. #5.

Respondent International Brotherhood of Teamsters (“International”) was first named as a defendant in Granite Rock’s Second Amended Complaint filed on

¹ Granite Rock filed an unfair labor practice charge against Local 287 with the National Labor Relations Board. After trial, the Board concluded that Local 287 did not ratify the new agreement until August 22, 2004, but that the contract should be retroactive to July 2, 2004. *Teamsters Local 287 (Granite Rock)*, 347 NLRB No. 32 (2006), *enfd.*, 293 Fed.App. 518 (9th Cir. 2008).

² All docket citations refer to the district court’s docket.

February 17, 2006, nineteen months after the case began and on the eve of trial between Granite Rock and Local 287. *See* Dkt. #1, 110. That complaint contained only one claim for relief, against both defendants, *for breach of contract*, JA 251-56, and asserted that the International was equally liable for the breach because of an alleged “agency relationship” between it and Local 287. JA 251, 256.

The International moved to dismiss, contending that it could not be liable for breach of contract since it was undisputed that it was not a party to the alleged contract and had no obligations that arose from it. *See* Dkt. #147. Granite Rock argued that the International was actually an “undisclosed principal,” and therefore was a party to the contract and liable for the alleged breach by Local 287. JA 280-90. The district court expressed skepticism about that theory, but granted Petitioner leave to file another complaint, warning counsel that he would be sanctioned if the “undisclosed principal” claim were found to be baseless. JA 281-83.

Granite Rock’s Third Amended Complaint³ totally abandoned any pretense of stating a contractual claim against the International, on an undisclosed principal or any other theory. *See* Dkt. #196 at 5:14-16 (conceding International not bound as party to the contract); Dkt. #178 at 8:6-8 (“By eschewing its earlier breach of contract action against the IBT based on an agency relationship, Granite Rock acknowledges that its Agreement is with Local 287 alone”). Instead, while the Third Amended Complaint continued to allege “Breach of Contract

³ All future references to the “Complaint” are to the Third Amended Complaint.

Against Defendant Local 287,” the only claim against the International was for “Interference/ Inducement of Breach of Contract” for “maliciously . . . interfer[ing] with the Agreement.” JA 316-318.

Petitioner subsequently acknowledged that the Complaint attempted to state a “federal common law tortious interference claim under Section 301” against the International. Dkt. #178 at 4:8 (footnote omitted). Granite Rock also stated that it might still attempt to raise a breach of contract claim against the International based on an “agency legal theory,” but conceded that the “factual basis needed” did not presently exist. Dkt. #178 at 6 n. 3. No such claim was raised thereafter.

The Complaint’s tortious interference claim was premised on the alleged actions of Rome Aloise, Secretary-Treasurer of Teamsters Local 853, which also has a contract with Granite Rock, and whose members refused to cross Local 287’s picket lines during the strike. JA 323-24; *see* Dkt. #104 at 6:8-7:24; Dkt. #178 at 2; Dkt. #169 at 4; Dkt. #99 at 4-5. Granite Rock alleged that Mr. Aloise urged Local 287 to continue the strike after July 2 in an effort to achieve the “back-to-work” agreement that would have protected the members of his local for their support of Local 287. JA 311-13, 383-84; Dkt. #178 at 2. The Complaint was threadbare as to alleged tortious interference, apart from conclusory allegations that would not pass muster under the pleading standards in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009). *See, e.g.*, JA 306 (plaintiff “expect[s] that evidentiary support will be obtained”); *id.* 309 (“Plaintiff believes” an International employee was involved; “further evidentiary support will be

obtained”); *id.* 307, 308, 311. While the Complaint claimed Mr. Aloise was acting as agent for the International when he urged Local 287 to remain on strike, the only facts pleaded were that he had a business card identifying him as Administrative Assistant to the International’s General President (part-time); that he was provided a cellular phone by the International; and that “Plaintiff . . . believes that discovery will show” that the International reimbursed Mr. Aloise for certain unidentified travel expenses. JA 306-07; *see* Dkt. #104 at 7:16-24. In short, the Complaint did “not ‘nudge[] [the] claim[]’” of tortious interference “across the line from the conceivable to plausible.” *Iqbal*, 129 S.Ct. at 1950-51 (quoting *Twombly*, 550 U.S. at 570).

The International again moved to dismiss Granite Rock’s claim on the ground that Section 301 does not encompass tortious interference claims against non-parties that have no rights or obligations under the contract at issue. Dkt. #186 at 15:3-14. The district court granted the motion with prejudice, “holding that a suit for tortious interference with contract does not lie under LMRA Section 301(a).” JA 332.

Granite Rock then asked the district court to certify its order for immediate appeal pursuant to F.R.C.P. 54(b). Dkt. #196. It contended that certification was proper because the order “involves a discrete legal issue that is not involved in the remaining [breach of contract] claims [against Local 287],” *i.e.*, “whether Section 301(a) encompasses claims for tortious interference against non-signatories” *Id.* at 4:11-12; 9:20-22 (quotation marks omitted). The district court certified its order because the appeal “concerns whether a plaintiff can assert a

claim for tortious interference with contract against a non-signatory to the contract.” JA 337.

On appeal to the Ninth Circuit, Granite Rock acknowledged that its Section 301 claim against the International for tortious interference “derive[d] from a general rather than contractual duty.” Ninth Cir. Opening Br. at 33. It argued that the district court had erroneously failed “to recognize tortious interference . . . as a valid cause of action” under Section 301. *Id.* at 67. Contrary to the position that it now takes before this Court, Granite Rock was very clear that it was seeking punitive damages. *See, e.g., id.* at 68 (“Because this action has been pled as an intentional wrongdoing, it seeks compensatory and punitive damages more associated with tortious conduct”); Ninth Cir. Reply Br. at 30.⁴

In its reply brief to the Ninth Circuit, Granite Rock again argued that the Complaint alleged ample facts to support its “interference claim,” citing *Milne Employees Association v. Sun Carriers, Inc.*, 960 F.2d 1401, 1411 (9th Cir. 1991), a case involving tortious interference. Ninth Cir. Reply Br. at 11. In a footnote it cited the RESTATEMENT (SECOND) OF TORTS, § 766A-C (1977), and stated that “Granite Rock makes *only* a Section 766A type claim”—*i.e.*, “(A) intentional interference with another’s performance with its own contract.” *Id.* (emphasis in original).

The Ninth Circuit (Circuit Judges Gould and Bea; District Judge Sedwick) unanimously affirmed the dismissal of the International. Contrary to Petitioner’s assertion, the court did not “principally rel[y] on [the International’s] non-signatory status

⁴ In the district court, Granite Rock also stated that it was seeking punitive damages. Dkt. #211 at 15:14-16.

. . .” Pet’r Br. at 45. Rather, the court concluded that an action can be brought under Section 301 only if “the underlying agreement . . . *created* the rights or liabilities which the parties seek to vindicate by their suit.” JA 50. The panel recognized that Section 301 can provide a breach of contract claim against a non-party that was “so intertwined [with a party to the contract] that one is the ‘alter ego’ of the other,” but noted that “Granite Rock did not pursue such a theory in the district court.” JA 50-51. The Ninth Circuit held that because the International “has no rights or duties under the agreement, . . . Granite Rock’s tortious interference claim against [the International] does not meet the requirements of section 301(a).” JA 50. The panel rejected Granite Rock’s interpretation of the legislative history of Section 301, and further rejected its invitation to fashion a federal common law tort of “tortious interference” under Section 301:

Congress intended to improve the enforcement of bargaining agreements via the LMRA. . . . The plain language of the statute appears to require at least that rights or obligations created by a labor agreement be in contest to support a section 301(a) challenge. . . . Any “gap” that might exist in Congress’s labor law design is for Congress and not for us to fill. When Congress regulates an area comprehensively, as it has done in the federal labor laws, rights and remedies can be defined and circumscribed. Congress has not left parties such as Granite Rock altogether without recourse. It has provided for remedies in labor disputes through both section 301 and the National Labor Relations Act Indeed, Granite Rock vigorously pursued actions against Local 287 in the federal courts as well

as in the National Labor Relations Board. If Congress did not provide a remedy for Granite Rock directly against [the International] on its asserted tortious interference claim, then that is an issue to be addressed by Congress, not by an extraordinary and outlier interpretation of the governing statute.

JA 54-55. Granite Rock sought review *en banc*, but no judge voted to hear the case.

SUMMARY OF THE ARGUMENT

Section 301 permits claims for breach of a CBA. Granite Rock initially attempted to state such a breach of contract claim against the International, but later abandoned it in the district court in favor of a claim for tortious interference. The Ninth Circuit followed the law of eight other circuits and held that Section 301 does not authorize tort claims.

The plain language of the statute demonstrates that the Ninth Circuit was correct that Section 301 is limited to claims for breach of contract. Section 301 provides federal courts with jurisdiction over “[s]uits for violation of contracts between an employer and a labor organization.” A suit against a non-party to a CBA, that owes no duty created by that contract, is not a “suit[] for violation of contract[].” Granite Rock’s broad reading expands Section 301 far beyond the Court’s prior interpretations of its plain language.

The legislative history of Section 301 demonstrates that Congress intended only to create a federal claim for the enforcement of contracts between unions and employers because state laws generally made it difficult, if not impossible, for a signatory-employer to sue a signatory-union to enforce the parties’ CBA.

Congress did not, however, intend to create tortious interference claims in Section 301 against non-party parent employers or parent unions that have no duties that are created by the CBA. Congress created tort-like claims in other sections of the LMRA, but they are not applicable to the conduct Petitioner alleges against the International. In fact, Congress considered, but rejected, creating a remedy for that precise type of conduct.

While the Court has authority to fashion a common law of contract enforcement, it should decline Petitioner's suggestion that it rewrite Section 301 to include tort claims against non-parties that have no contractual obligations. Torts involve issues of public policy, but Congress has determined that it should decide important substantive labor law rights and remedies through statutes over which the National Labor Relations Board has the primary enforcement responsibility. Permitting courts to create a common law of tort would be contrary to Congress's explicit decision that labor policy should not be fashioned by courts applying common law concepts.

There is no basis for the Court to disrupt the rights and remedies Congress created in Section 301. Granite Rock already has a contractual breach of contract claim that it can pursue against Local 287 pursuant to the CBA's arbitration provision; and it can enforce that provision under Section 301. It also has an unfair labor practice that it pursued against Local 287 before the National Labor Relations Board. While Petitioner cannot pursue a tortious interference claim against the International under Section 301, it is not unusual that, when Congress decided to regulate the field of labor and preempt state law causes of action, it curtailed or eliminated certain

remedies previously enjoyed by both unions and employers. That is part of the balance Congress struck, and it is for Congress (not the courts), to revisit that decision.

ARGUMENT

I. PETITIONER HAS WAIVED ANY SECTION 301 CLAIM AGAINST THE INTERNATIONAL FOR BREACH OF CONTRACT.

Before turning to the arguments in Petitioner's brief, we wish to emphasize that in accordance with clearly recognized principles of agency and alter-ego, a breach of contract claim *can* be stated under Section 301 against a parent union or parent employer based on an alleged violation of a CBA by one of its subsidiaries. Granite Rock, however, made a conscious (and proper) decision not to pursue such a claim against the International.

A. Liability For Breach Of Contract Can Be Imposed On A Parent Entity Under Agency Or Alter-Ego Principles.

It is well-established that both parent unions and parent employers can be held liable, if certain legal standards are met, for the conduct of one of their subsidiaries. Parents can be liable for breach of contract on the basis of common law agency principles. *See, e.g., Phoenix Canada Oil Co. v. Texaco, Inc.*, 842 F.2d 1466, 1477-78 (3d Cir. 1988) (parent company may be held liable for activities of its subsidiary); *Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212, 216 (1979) (international union can be liable for breach of contract to which it is signatory based on strikes by its locals). Parent entities can also be liable for breach of contract based on the actions of subsidiaries that are alter-egos of the

parent, *i.e.*, the parent and subsidiary effectively lack a separate existence.⁵ Alter-ego status occurs most often with international unions when they have imposed a trusteeship over an affiliated local union, thereby running its affairs.⁶

In the context of an alleged breach of a CBA, where obligations are not established by generally-applicable public law, but rather arise voluntarily by agreement between a union and an employer, a Section 301 claim can properly be brought against an international only if it is a party to the agreement, or has otherwise assumed obligations under the contract. If, for example, Local 287 entered into the CBA with Granite Rock *on behalf of the International*, a Section 301 breach of contract claim properly could be brought against the International based on agency principles because it would be a party to the CBA and bound to the obligations created by it. *Cf.* 29 U.S.C. § 185(b) (unions liable for acts of agents). Similarly, a Section 301 breach of contract claim could properly be brought against the International if it was an alter-ego of Local 287 and therefore also was bound by the obligations in the agreement.⁷

⁵ See, e.g., *Lumpkin v. Envirodyne Indus., Inc.*, 933 F.2d 449 (7th Cir. 1991). The relevant factors to establish alter-ego status include common management, centralized control, interrelation of operations, and common ownership. See *Radio & Television Broad. Technicians Local Union 1264 v. Broadcast Serv. of Mobile, Inc.*, 380 U.S. 255, 256 (1965).

⁶ See, e.g., *NLRB v. Local 542, Int'l Union of Operating Eng'rs*, 329 F.2d 512, 514-15 (3d Cir. 1964) (international may be liable for unfair labor practices committed by representative of international-appointed trustee who effectively controlled local).

⁷ See *Highway & City Freight Drivers, Local No. 600 v. Gordon Transps., Inc.*, 576 F.2d 1285, 1292 (8th Cir. 1978) (employ-

In other words, when there is an alleged breach of a CBA that on its face is between a *local union* and an employer, a Section 301 claim can properly be brought against an international only if the international (directly, or through its agent or alter-ego) assumed obligations under the contract *and* violated those obligations (again, directly or through its agent or alter-ego). *See* Pet'r Br. at 50-51. As labor law professor Archibald Cox noted soon after the enactment of Section 301 in 1947:

If the collective bargaining agreement is between the employer and the local union as principal, so that *no promise is made* by the international, the international should not be liable. On other hand, *if there is a promise* by the international that it will not cause, engage in, or support any [work] stoppage during the life of the agreement, then the liability of the international would depend on (1) whether the local engaged in the strike at least partly for the purpose of furthering the interests of the international, and (2) whether the local's activities were of the same general nature as those in which it was authorized to engage on behalf of the international. The answers to these questions would depend on the precise relationship between the two unions and the amount of discretion vested in the local. It is submitted, however, that *the relationship should ordinarily be regarded as similar to that which exists between parent corporation and subsidiary, and that in dealing with local affairs, including local strikes and boycotts, a local union*

ers can seek relief against international under respondent superior or alter-ego theory for breach of contract by local).

ordinarily acts as a separate entity in pursuit of its own affairs.

Archibald Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 Harv. L. Rev. 274, 311-12 (1948) (footnote omitted; emphasis added).

B. Granite Rock Abandoned Any Contractual Claim That The International Is Liable As A Party To The Local 287 Collective Bargaining Agreement Through Agency Or Alter-Ego Principles.

Petitioner now suggests that it is asserting a breach of contract claim against the International based on principles of agency or alter-ego. First, it contends (contrary to its position below) that it is seeking only contract damages.⁸ Second, Petitioner repeatedly claims that the International somehow exercised complete control over Local 287 and “displaced” it as a separate entity, intimating that the International became the local’s alter-ego.⁹ Finally, Petitioner suggests that it should be allowed to

⁸ Compare Pet’r Br. at 32 (“action for contractual damages”), 51 n.30 (“seeks only contractual damages”) with Dkt. #211 at 15:14-16, Ninth Cir. Opening Br. at 68, Ninth Cir. Reply Br. at 30 (seeking punitive damages) and note 4, *supra*.

⁹ See, e.g., Pet’r Br. at i (“effectively displaces its signatory local union and causes a strike”); 32 (International caused breach “by displacing Local 287 and directly causing a violation”); 37 n.12 (“IBT . . . displaced Local 287”; “IBT violated the contract”); 46-47 (“Local 287 was in no position to disregard the command of” the International); 47 (“IBT effectively displaced Local 287”); 51 n.30 (“IBT displac[ed] Local 287, taking control of strike activities, and instructing employees and Local 287 to violate the Agreement’s no-strike provision”); 57 (referring to Local 287 as “the displaced Local” and stating that the International “caused the breach”).

proceed on an alter-ego theory in order to achieve “parity between employers and unions,” since unions can pursue Section 301 actions against parent employers “pursuant to alter-ego and single employer doctrines.” Pet’r Br. at 53 n.31; *see also id.* at 58.¹⁰

Granite Rock should not be allowed to pursue a contractual claim against the International because it abandoned any such claim in the district court and did not raise the issue on appeal. As noted *supra*, when the district court granted Granite Rock leave to re-plead a contractual claim based on its theory of “undisclosed principal,” Petitioner failed to do so. Instead, its Third Amended Complaint asserted an “Interference/Inducement of Breach of Contract” against the International, while retaining a “Breach of Contract” claim only against Local 287. *Compare* JA 317 *with* JA 316. Although Granite Rock suggests that its claim against the International might be characterized as a “hybrid” contract/tort claim, it repeatedly acknowledged to both the district court and the Ninth Circuit that its *only* claim against the International in the Third Amended Complaint was for “tortious” conduct. *See, e.g.*, 9th Cir. Opening Br. at 13 n.4, 15, 30, 33, 35, 38, 62; 9th Cir. Reply Br. at 11 n.6, 24; Dkt. #178 at 1:4-5 (asserting “claim of federal common law tortious interference”); *id.* at 4:8-

¹⁰ Unions and employers already enjoy parity to proceed against one another’s parent entities. The suggestion that employers cannot establish alter-ego liability against unions “[b]ecause unions are legally separate unincorporated associations with no common ownership or control” (Pet’r Br. at 53 n.31), simply assumes a factual scenario that might not provide the basis for alter-ego liability. *See* n.5, *supra*. But as noted above, alter-ego liability *can* exist against an international union when it and its local effectively are *not* separate entities because there *is* common control. *See* n.6, *supra*.

9 & n.2; *id.* at 5:22-26; *id.* at 8:2-4; *see* Dkt. #178 at 10:6-13 (arguing that “tort” claims must be cognizable under Section 301). That is clearly how both the district court and the Ninth Circuit viewed and analyzed Petitioner’s claim. *See, e.g.*, JA 49, 54-55, 330-32.¹¹

In sum, because Granite Rock is now claiming that the International breached *contractual obligations* that it had under an agency or alter-ego theory, Petitioner is improperly seeking to litigate claims it could have pleaded but consciously abandoned in the district court, and therefore were not considered by either that court or the Ninth Circuit. In Granite Rock’s own words, its Third Amended Complaint “eschew[ed] its . . . breach of contract action against the IBT based on an agency relationship” (Dkt. #178 at 8:6-8); “acknowledge[d] that its Agreement [was] with Local 287 alone” (Dkt. #178 at 8:6-8); and admitted that it lacked the “factual basis needed” to

¹¹ A breach of contract is, of course, *an element of* the tort of tortious interference with contract, but that cannot convert Petitioner’s claim into some ambiguous “hybrid” that straddles contract and tort law. Tortious interference with contract is firmly rooted in a series of business torts founded on public law obligations independent of the voluntarily undertakings contained in contractual agreements. *See* RESTATEMENT (SECOND) OF TORTS Div. Nine, p. 1 (1977); *id.* Ch. 37 Introductory Note, p. 5 (there are “several forms of the tort” of interference with existing or prospective contractual relations and they “are often not distinguished by the court”); *id.* § 766 cmt. c (“inducing breach of contract is . . . but one instance . . . of protection against improper interference in business relations”); *id.* §§ 766-766C (describing various related torts); PROSSER & KEETON ON TORTS: LAWYER’S EDITION § 129 at 978 (W. Page Keeton ed., 5th ed. 1984) (“The law of interference with contract is thus one part of a larger body of tort law aimed at protection of relationships, some economic and some personal.” (citations omitted)).

allege an agency theory of liability (Dkt. #178 at 6 n.3). Petitioner also noted that any liability on behalf of the International would “derive[] from a general rather than contractual duty” (9th Cir. Opening Br. at 33).¹² Contrary to Petitioner’s suggestion (Pet’r Br. at 53 n.31), such contractual claims should not be considered by the Court because it is “legally fatal” that those claims were not raised below. *Ohio Forestry Ass’n, Inc. v. Sierra Club*, 523 U.S. 726, 738 (1998); *Jones v. Hildebrant*, 432 U.S. 183, 186-89 (1977) (dismissing writ of certiorari where petitioner sought to litigate claim that was not asserted in complaint or litigated below).

Moreover, to the extent that certiorari was granted to consider whether an international union or parent employer can be liable for tortious interference under Section 301, Granite Rock has now abandoned that claim in its merits brief. Thus, the Court should find that certiorari was improvidently granted. *See* Supreme Court Rule 24.1 (a).¹³

¹² In contrast, when defending its earlier Second Amended Complaint, Granite Rock argued that the IBT exercised “substantial control over Local 287” and Granite Rock sought to hold the IBT “vicarious[ly] and direct[ly]” liable for the alleged breach. Dkt. #155 at 5:14-19.

¹³ Indeed, if Granite Rock only seeks “contractual damages” because the International allegedly “displaced [Local 287 as] a signatory to the labor contract, directly causing a violation of the labor contract,” Pet’r Br. at 51, n.30, 58, its only possible Section 301 claim against the International would have been to enforce the grievance and arbitration provisions of the CBA regarding the International’s alleged breach of the no-strike clause. Petitioner was required to file a *timely contractual grievance* against the International (which it did not), since its breach of contract claim constitutes a “dispute[] arising under [the] agreement” that must be “resolved in accordance with the

II. SECTION 301 PROVIDES JURISDICTION SOLELY TO ENFORCE RIGHTS OR OBLIGATIONS THAT ARE CREATED BY CONTRACT.

A. The Plain Language Of Section 301 Demonstrates That It Is Limited To Claims For Breach Of Contract.

The issue correctly framed is whether Section 301 provides for tort claims against a non-party to a CBA that has no obligations that are created by that contract. The proper analysis of that issue begins, “as always, with the language of the statute.” *Dean v. United States*, 129 S.Ct. 1849, 1853 (2009) (quoting *Williams v. Taylor*, 529 U.S. 420, 431 (2000)). “And where the statutory language provides a clear answer, it ends there as well.” *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999).

[grievance] procedure.” JA 434; Pet’r Br. at 36 (“This case concerns a violation of a labor contract that requires interpretation of its multi-faceted no-strike provision to determine whether the alleged violation occurred.”); *id.* at 32-33 (Petitioner should have “the ability to seek the same contractual remedies from the [International] that would be available when a signatory union violates a labor contract.”); *id.* at 46. Granite Rock simply ignored the dispute resolution mechanism created by the CBA to determine whether a party breached the agreement and, if so, the appropriate remedy. The district court ordered Granite Rock and Local 287 to resolve those very issues through the contract’s grievance/arbitration procedure (*see* JA 381-82); and that same procedure was equally applicable if the International truly displaced Local 287 as a party to the contract. Arbitration against the International is no longer available to Granite Rock because it failed to exhaust the CBA’s grievance procedure in a timely manner, which is a prerequisite to arbitration. *See* JA 437.

Section 301 provides federal courts with jurisdiction over “[s]uits for violation of contracts between an employer and a labor organization” As the Court observed in *Textron Lycoming Reciprocating Engine Division, Avco Corp. v. United Automobile Workers*, 523 U.S. 653, 657 (1998), “[s]uits for violation of contracts’ under § 301(a) are . . . suits that claim a contract has been violated.” The common-sense understanding of a suit “for violation of contracts” (or “suits that claim a contract has been violated”) is a suit directed at a defendant to remedy an alleged breach of *its contractual obligation*. A suit against a non-party, that owes no duty created by the contract, is not a suit “for violation of contract[.]” As the Ninth Circuit correctly found: “The plain language of the statute appears to require at least that rights or obligations created by a labor agreement be in contest to support a section 301(a) challenge.” JA 54. As discussed *supra*, Petitioner abandoned its claim in the district court that the International violated some obligation it owed Petitioner pursuant to the CBA.

Textron instructs that Section 301’s plain language should not be given a tortured construction to permit claims against a defendant that has not breached a contractual obligation. In that case, a union filed a Section 301 claim alleging that the employer fraudulently induced the union to sign a CBA. 523 U.S. at 654-55. The Court concluded that the claim was not cognizable, and rejected the argument that “suits for violation of contracts” should be read broadly to include claims that merely “concern[] a violation of contract.” See 523 U.S. at 656 (quotation mark and citation omitted; emphasis added); see also *Teamsters Nat’l Auto Transporters Indus. Negotiating Comm. v. Troha*, 328 F.3d 325, 329 (7th Cir. 2003) (*Textron*

establishes the “narrowness” of Section 301, limiting it to “violations of contracts” (quotation marks and citation omitted).¹⁴

Contrary to *Textron*, Granite Rock would have the Court interpret “suits for violation of contracts” broadly, as encompassing *any* suit concerning a violation of a labor contract, or predicated in some manner on a violation of a labor contract. *See* Pet’r Br. at 13, 33-34. Pursuant to Petitioner’s proffered interpretation, all that is required to invoke federal court jurisdiction under Section 301 “is that the suit was: (1) ‘filed because a contract has been violated,’ and (2) the contract in question is ‘between’ an employer and a labor organization.” *See id.* at 34 (citation omitted). But such an expansive reading

¹⁴ *Textron* states that Section 301 “erects a gateway through which parties may pass into federal court; once they have entered, it does not restrict the legal landscape they may traverse.” 523 U.S. at 658. The Court was not suggesting, however, that Section 301 extends beyond the enforcement of contractual rights and duties. It went on to give the following examples: “Thus if, in the course of deciding whether a plaintiff is entitled to relief for the *defendant’s alleged violation of a contract*, the defendant interposes the affirmative defense that the contract was invalid, the court may, consistent with § 301(a), adjudicate that defense. Similarly, a declaratory judgment plaintiff *accused of violating a collective-bargaining agreement* may ask a court to declare the agreement invalid.” *Id.* (citation omitted; emphasis added). As these examples demonstrate, the “gateway” is that the plaintiff or defendant is accused of breach of contract. Thereafter, that party may enter a “legal landscape” in which it can raise a variety of defenses that go beyond the narrow issue of whether there was a failure to comply with the terms of the contract, *e.g.*, invalidity of the contract, fraudulent inducement, etc. *See also infra* at Section II.C (discussing limitations on development of federal common law under Section 301).

would permit not only suits for tortious interference with contract, but also *any* claim that concerns or is predicated in any way on a violation of contract, even where a non-party plaintiff asserting a Section 301 claim has no rights under the contract, or where a non-party defendant has no obligations arising from the contract. Allowing such claims to be brought in federal court would dramatically expand Section 301 jurisdiction beyond the plain and limited meaning that this Court, and virtually every circuit, have given to the phrase “suits for violation of contracts,” *viz.*, suits to enforce the voluntary and private rights and obligations created by the CBA itself.¹⁵

¹⁵ In addition to the Ninth Circuit, tortious interference claims are not cognizable under Section 301 in the following circuits: *Bowers v. Ulpiano Casal, Inc.*, 393 F.2d 421, 423 (1st Cir. 1968); *Aacon Contracting Co. v. Ass’n of Catholic Trade Unionists*, 276 F.2d 958 (2d Cir. 1960), *aff’g and adopting* 178 F.Supp. 129, 129-30 (E.D.N.Y. 1959); *Greenblatt v. Delta Plumbing & Heating Corp.*, 68 F.3d 561, 572 (2d Cir. 1995); *Int’l Union, Mine Workers v. Covenant Coal Corp.*, 977 F.2d 895, 897 (4th Cir. 1992); *Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc.*, 690 F.2d 489, 500-01 (5th Cir. 1982), *cert. denied*, 464 U.S. 932 (1983); *Serv., Hosp., Nursing Home & Pub. Employees Union, Local No. 47 v. Commercial Prop. Servs., Inc.*, 755 F.2d 499, 505-06 (6th Cir.), *cert. denied*, 474 U.S. 850 (1985); *Loss v. Blankenship*, 673 F.2d 942, 947-48 (7th Cir. 1982); *United Food & Commercial Workers Union v. Quality Plus Stores, Inc.*, 961 F.2d 904, 905-06 (10th Cir. 1992); *Xaros v. U.S. Fid. & Guar. Co.*, 820 F.2d 1176, 1181 (11th Cir. 1987). See also discussion in Section II.D., *infra*, regarding the wide range of non-parties against whom Section 301 suits could be brought pursuant to the broad reading urged by Petitioner.

B. The Legislative History Supports The Interpretation Of Section 301 As Permitting Only Suits For The Enforcement Of Contractual Rights And Duties.

1. Congress enacted Section 301 to address a clear and well-defined problem.¹⁶ Before the LMRA was enacted in 1947, employers faced procedural difficulties suing signatory unions for breach of contract because, as unincorporated associations, labor organizations were not proper defendants in many states' courts.¹⁷ The concern motivating Section 301

¹⁶ See generally *Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401, 408-16 (1981) (describing legislative history); *Atkinson v. Sinclair Ref. Co.*, 370 U.S. 238, 247-48 (1962) (same); *Sinclair Oil Corp. v. Oil Workers Int'l Union*, 452 F.2d 49, 52 (7th Cir. 1971) (same).

¹⁷ See, e.g., *Milam v. Settle*, 32 S.E.2d 269, 272 (W. Va. 1944); *Zane v. Int'l Hod Carriers Union*, 122 P.2d 715, 719 (Kan. 1942); *Hallman v. Wood, Wire & Metal Lathers' Int'l Union*, 15 S.E.2d 361, 363-64 (N.C. 1941); *Walker v. Grand Int'l Bhd. of Locomotive Eng'rs*, 199 S.E. 146, 150-51 (Ga. 1938); *Streib v. Int'l Bhd. of Boilermakers*, 76 S.W.2d 400, 401-03 (Mo. 1934); see 27 A.L.R. 786 (1923) ("Liability of unincorporated labor organization to suit"); 92 Cong. Rec. A3306 (1946) (citing need for legislation to ensure that unions can be sued); Dean Dinwoodey, "Responsibility" Demanded of Unions, N.Y. Times, July 25, 1937 (describing difficulties in suing unions and calling for legislation). The difficulty suing unions led to the related problem that employers often served and sued individual union members and held them liable. See S. Rep. No. 80-105, at 15-16 (1947), reprinted in 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, 421-22 (1948) [hereinafter LEG.HIST.]; *Complete Auto Transit*, 451 U.S. at 407; *Atkinson*, 370 U.S. at 247-48; 93 Cong. Rec. 5146-47 (1947), reprinted in 2 LEG.HIST. at 1497 (statement of Sen. Ball). While Section 301 ensured that unions could be held responsible for breaching their contracts, it also insulated individual members from personal liability. See 29 U.S.C. § 185(b). Congress also intended Section

was to create “a procedure for making such agreements *enforceable* in the courts by either party.” *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 453 (1957) (emphasis added); *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 510 (1962); *United Ass’n of Journeymen v. Local 334, United Ass’n of Journeymen*, 452 U.S. 615, 624 (1981) (“§ 301(a) provided federal jurisdiction for *enforcement of contracts* made by labor organizations to counteract jurisdictional defects in many state courts that made it difficult or impossible to bring suits against labor organizations by reason of their status as unincorporated associations”) (emphasis added); *accord, Wooddell v. International Bhd. of Elec. Workers, Local 71*, 502 U.S. 93, 99 (1991). By ensuring that unions, as well as employers, could be sued for breach of contract, Section 301 “establish[ed] a *mutual responsibility* when the collective-bargaining process has resulted in a contract.” *Complete Auto Transit*, 451 U.S. at 408 (quoting 92 Cong. Rec. 838 (1946) (statement of Rep. Case); discussing analogous provision in 1946 Case bill) (emphasis added).¹⁸

301 to create national uniformity with regard to the enforcement of labor agreements. See *Int’l Bhd. of Elec. Workers v. Hechler*, 481 U.S. 851, 856-57 (1987).

¹⁸ See 93 Cong. Rec. 3955 (1947), *reprinted in* 2 LEG.HIST. at 1014 (statement of Sen. Taft); 93 Cong. Rec. A3232 (1947), *reprinted in* 2 LEG.HIST. at 1626 (statement of Sen. Ball) (“[C]ollective bargaining cannot continue to be an important factor in our labor relations unless *both parties* are bound by their contracts.” (emphasis added)); 93 Cong. Rec. A2377 (1947), *reprinted in* 2 LEG.HIST. at 1524 (statement of Sen. Ball); S. Rep. No. 80-105, at 16 (1947), *reprinted in* 1 LEG.HIST. at 422. Further evidence regarding the purpose of Section 301 comes from the history of the 1946 Case bill, which was not enacted, but which included a provision similar to Section 301. See

Congressional statements make clear that the purpose of Section 301 was to enforce contractual rights, not to permit tort claims against third parties who had no contractual obligations under a CBA. As stated by Senator Taft, one of the major architects of the LMRA (also known as the “Taft-Hartley Act”): “Finally, we have a provision in title III for bringing a lawsuit for breach of contract. Breach of what kind of contract? Breach of contract for collective bargaining.” 93 Cong. Rec. 4390 (1947), *reprinted in* 2 LEG.HIST. at 1133. “[W]e give to employers the right to sue a union in interstate commerce, in a Federal court, for violation of contract. *It does not go beyond that.*” 93 Cong. Rec. 5146 (1947), *reprinted in* 2 LEG.HIST. at 1497 (statement of Sen. Ball) (emphasis added). *Accord*, S. Rep. No. 80-105, at 15-16 (1947), *reprinted in* 1 LEG.HIST. at 421-22 (“collective agreements should be mutually binding on both parties to the contract”). *See also* Pet’r Br. at 31 (“Congress enacted Section 301 to provide for uniform federal enforcement of labor contracts.”).

2. Other provisions in the LMRA further demonstrate that Section 301 is limited only to the enforcement of contractual rights and obligations. Those other sections, by contrast, create certain labor-related tort-like claims for interference with business relations. Section 8(b)(4)(B), 29 U.S.C. § 158(b)(4)(B), makes it an unfair labor practice for a labor organiza-

Complete Auto Transit, 451 U.S. at 410 (history of Case bill provides useful insights into the scope and purpose of Section 301); *see, e.g.*, 92 Cong. Rec. 838 (1946) (statement of Sen. Case) (among other things, Case bill “seeks to establish a mutual responsibility when the collective-bargaining process has resulted in a contract”); 92 Cong. Rec. 5705 (1946) (Sen. Taft); 92 Cong. Rec. A3304 (1946) (Sen. Ball).

tion or its agents “to induce or encourage” or to “threaten, coerce or restrain” a third party to “cease doing business” with an employer; and Section 303, 29 U.S.C. § 187, provides a federal court claim for injury to an employer’s business if a union violates Section 8(b)(4). These provisions are directed at curtailing “[a] secondary boycott [which] is both effective and unlawful precisely because it disrupts the business relations of two parties. It is an interference by one party with the contractual relations of two others.” *Associated Imports, Inc. v. Int’l Longshoremen’s Ass’n*, 609 F.Supp. 595, 600 (S.D.N.Y. 1985). “Violations of [Section 8(b)(4)(B)] sound in tort, and are in the nature of interference with advantageous economic relations.” *Taylor Milk Co. v. Int’l Bhd. of Teamsters*, 248 F.3d 239, 247 (3d Cir. 2001). Sections 8(b)(4)(B) and 303, however, do not encompass the activity allegedly engaged in by the International in this case; and Granite Rock did not file an unfair labor practice charge against the International or attempt to state a Section 303 claim against it in district court.

Even more to the point, Congress considered, but rejected, creating an unfair labor practice that would have made unlawful the very conduct Petitioner asserts the International committed. The House version of the bill that eventually became the LMRA would have made it an unfair labor practice “to call, authorize, engage in, or assist any strike . . . , an object of which is to compel the employer to accede to the inclusion in a collective-bargaining agreement of any provision which under 2 (11) is not included as a proper subject matter of collective bargaining.” H.R. 3020, 80th Cong. § 101 (1947) (as passed House, April 18; proposed Section 8(b)(3) of the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.* (“NLRA”)),

reprinted in 1 LEG.HIST. at 179 (emphasis added). But that provision was omitted from the final version of the bill.¹⁹ “Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.” *INS v. Cardoza Fonseca*, 480 U.S. 421, 442–43 (1987) (quotation marks and citation omitted); *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 200 (1974) (deletion of provision “strongly militates against a judgment that Congress intended a result that it expressly declined to enact”). The Court “will not adopt by judicial fiat an interpretation that Congress specifically rejected when it enacted the 1947 amendments to the NLRA.” *Jacksonville Bulk Terminals, Inc. v. International Longshoremen’s Ass’n*, 457 U.S. 702, 720 (1982).

In sum, in the LMRA Congress prohibited in Sections 8(b)(4)(B) and 303 certain forms of interfe-

¹⁹ Section 2(11) of the House bill set forth mandatory subjects of bargaining. H.R. 3020, 80th Cong. § 101 (1947) (as passed in House on April 18; proposed Section 2(11) of the NLRA), reprinted in 1 LEG.HIST. at 166–67. The “back-to-work” agreement, that the International allegedly sought and that allegedly was the reason it called for the strike against Granite Rock to continue (Pet’r Br. at 32, 37 n.12 & 47), would have protected employees outside of the Local 287 bargaining unit, as well as other Teamster Locals, for their support during the strike. See JA 383–84, ¶¶ 3–5 (granting amnesty to “supporters and sympathizers or . . . any labor organization” and to Granite Rock “employees who are not represented by [Local 287] . . . [and] any labor organization . . . [for] honoring the picket lines of [Local 287]”). The “back-to-work” agreement would not have come within any of the enumerated mandatory subjects of bargaining contained in Section 2(11) of the House bill, and therefore the alleged conduct by the International would have been an unfair labor practice under the House bill.

rence with an employer's business relations, but specifically rejected a provision that would have prohibited non-parties (including international unions) from calling or assisting a strike over a non-mandatory subject of bargaining. That Congress considered, but declined to prohibit the exact type of conduct complained of by Granite Rock, "counsels wariness" in reading such a prohibition into Section 301 as Petitioner urges. As the Court has cautioned:

It is relevant to recall that the [LMRA] was, to a marked degree, the result of conflict and compromise between strong contending forces and deeply held views on the role of organized labor in the free economic life of the Nation[] and the appropriate balance to be struck between the uncontrolled power of management and labor to further their respective interests. This is relevant in that it counsels wariness in finding by construction a broad policy . . . as such when, from the words of the statute itself, it is clear that those interested in just such a condemnation were unable to secure its embodiment in enacted law.

NLRB v. Drivers Local Union No. 639, 362 U.S. 274, 289-90 (1960) (quoting *Local 1976, United Bhd. of Carpenters v. NLRB*, 357 U.S. 93, 99 100 (1958)).

3. In their analysis of the legislative history, Petitioner and *amicus* Associated General Contractors rely heavily on the fate of the House version of what became Section 301. Unlike the Senate bill, which stated that "[s]uits for violation of contracts . . . may be brought in any district court" (H.R. 3020, 80th Cong. § 301 (1947) (as passed Senate, May 13), *reprinted in* 1 LEG.HIST. at 279), the House bill provided that "[a]ny action for or proceeding involv-

ing a violation of [a labor] agreement . . . may be brought by either party in any district court” H.R. 3020, 80th Cong. § 302 (1947) (as passed House, April 18), *reprinted in* 1 LEG.HIST. at 221. Petitioner and its *amicus* argue that, because the final version of Section 301 contains language similar to the Senate version that omits the phrase “brought by either party,” Congress made a conscious decision to broaden Section 301 to include suits against non-parties that have no contractual rights or obligations.

This argument ignores the Conference Report that reconciled the two bills and demonstrates Congress’s view of their differences. The Report notes that the conference agreement “follows in general the provisions of the *House bill* with changes therein hereafter noted.” Rep. No. 80-510, at 65-66 (1947), *reprinted in* 1 LEG.HIST. at 569-70 (emphasis added). The Report then lists essentially three substantive changes to the House bill that the Conference Committee adopted. *Id.* The deletion of the phrase “brought by either party” is not among them. Thus, with respect to that language the Committee saw no material difference between the two bills, and the deletion of the language cannot reasonably be interpreted as a conscious decision by Congress to broaden the scope of Section 301.²⁰ In fact, the language in the Senate

²⁰ Similar amendments took place in 1946 with respect to the Case bill. The provision corresponding to Section 301 would have provided that “a suit for damages for . . . breach [of a collective bargaining agreement] may be maintained *by the other party or parties.*” H.R. 4908, 79th Cong. § 10 (1946) (February 8, 1946) (emphasis added). After intervening amendments, the bill was changed to read, “[s]uits for violation of a contract . . . may be brought in any district court.” H.R. 4908, 79th Cong. § 10(a) (1946) (May 25, 1946). Representative Case explained that the revised wording was intended to have the

bill that was finally included in Section 301 to describe the types of claims that can be brought— “[s]uits for violation of contracts”—is *narrower* than the corresponding language in the House bill—suits “involving a violation of an agreement.”

4. Granite Rock also suggests that because Congress mentioned California law when enacting Section 301, it must have intended to “federalize” *all* then-existing contract and labor law in California law. Because California generally recognized the tort of interference with contract, Petitioner concludes that Congress must have intended to include such a claim for relief under Section 301. *See also* Center on Nat’l Labor Policy Br. at 28. The legislative history is clear, however, that Congress cited California simply because it was one of the jurisdictions that had abrogated the common law rule regarding the ability to sue unincorporated associations and permitted suits against labor unions.²¹ Congress noted that “until *all* jurisdictions, and particularly the Federal Government, authorize actions against labor unions as legal entities, there will not be the mutual responsibility necessary to vitalize collective-bargaining agreements.” S. Rep. No. 80-105, at 17 (1947), *reprinted in* 1 LEG.HIST. at 423 (emphasis added). Congress’s

same effect: “All this section on suability does is to carry out the same purpose we had in the House bill, when we provided for making contracts actually binding upon both parties.” 92 Cong. Rec. 5930 (May 29, 1946).

²¹ *See e.g.*, S. Rep. No. 80-105, at 16-18 (1947), *reprinted in* 1 LEG.HIST. at 422-24 (“some States, including California . . . , have construed statutes permitting common name suits against associations doing business to apply to labor unions”; citing *Deeney v. Hotel & Apt. Clerks’ Union*, 134 P.2d 328 (Cal. App. Dep’t Super. Ct. 1943) (unions can be sued under California law despite their status as unincorporated associations)).

references to California law had nothing whatever to do with the type of tort claim that Granite Rock asks the Court to recognize.

Moreover, Granite Rock overreaches in claiming that California provided “state law causes of action to hold unions liable for interfering with labor contracts.” Pet’r Br. at 43. At the time, California courts had held that because of an international’s relationship with locals, it was privileged to induce the breach of a local’s contract with a third party. *Lawless v. Brotherhood of Painters*, 300 P.2d 159, 162 (Cal. App. 1956). In fact, the sole authority Petitioner cites for the unremarkable proposition that California *generally* permitted tortious interference claims, noted that labor unions fell within an *exception* to that rule, and could lawfully employ tactics that “have the effect of inducing breaches of contracts between employer and employee or employer and customer.” *Imperial Ice Co. v. Rossier*, 112 P.2d 631, 18 Cal.2d 33, 35 (1941); see *Pierce v. Stablemen’s Union, Local No. 8760*, 103 P. 324, 156 Cal. 70, 76-77 (1909) (explaining California’s rejection of other jurisdictions’ rules against secondary boycotts). Since California permitted precisely the type of secondary union activity that Congress intended to prohibit when it enacted Sections 8(b)(4)(B) and 303, it is clear that Congress in the LMRA was not “federalizing” all aspects of California’s regulation of unions.

5. In the end, Petitioner and its *amici* are forced to fall back on a general goal of the LMRA, to minimize industrial strife. See Pet’r Br. at 37-39, 43 (citing the LMRA’s “General Provisions,” 29 U.S.C. § 141(b)); *Amicus Center on Nat’l Labor Policy Br.* at 27-28. But as the Court aptly stated in *Board of Governors*

of the Federal Reserve System v. Dimension Financial Corp., 474 U.S. 361, 373-74 (1986):

Application of “broad purposes” of legislation at the expense of specific provisions ignores the complexity of the problems Congress is called upon to address and the dynamics of legislative action. Congress may be unanimous in its intent to stamp out some vague social or economic evil; however, because its Members may differ sharply on the means for effectuating that intent, the final language of the legislation may reflect hard-fought compromises. Invocation of the “plain purpose” of legislation at the expense of the terms of the statute itself takes no account of the processes of compromise and, in the end, prevents the effectuation of congressional intent.

Petitioner’s reliance on a broad policy behind the LMRA ignores the precise manner in which Section 301 was meant to advance that policy. In Congress’s words, Section 301 “promote[s] industrial peace *through faithful performance by the parties [of their] collective agreements . . . enforceable in the Federal courts.*” S. Rep. No. 80-185 (1947), at 16, *reprinted in* 1 LEG.HIST. at 422 (emphasis added); *id.* at 17, *reprinted in* 1 LEG.HIST. at 423 (“Statutory recognition of the collective agreement as a[n] . . . enforceable contract . . . will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace.”). In sum, there is no indication in the legislative history that Congress contemplated that Section 301 would contribute to industrial peace by creating federal court tort claims against parent employers and parent unions that have no duties created by a CBA.

Granite Rock's reference to a House Minority Report's discussion of "use of economic force to decide issues arising out of the interpretation or application of existing agreements" (Pet'r Br. at 42-43 n.21), is not proof that Section 301 was intended to encompass tortious interference claims. In fact the Minority Report was not addressing Section 301 or its purposes at all, but rather was directed to a completely unrelated section of the LMRA addressing "unlawful concerted activities." H.R. Min. Rep. No. 80-245, at 95 (1947), 1 LEG.HIST. at 386; see Rep. No. 80-510, at 58-59 (1947), *reprinted in* 1 LEG.HIST. at 562-63 (emphasis added); 93 Cong. Rec. 6378 (1947) (conference report). The proposed section that the report discussed was not included in the LMRA. *Id.* This Court has previously pointed to the failure to enact that provision, which would have expanded liability for specified labor-related activities, as support for *limiting* the scope of Section 301 liability, even though an employer may be left effectively remediless in certain situations. See *Complete Auto Transit*, 451 U.S. at 414-17.²²

²² The one passing reference to "Section 301" contained in the portion of the Minority Report cited by Granite Rock was actually a reference to an antitrust-related provision that was also later deleted. H.R. Min. Rep. No. 80-245, at 95 (1947), *reprinted in* 1 LEG.HIST. at 386; Rep. No. 80-510, at 65 (1947), *reprinted in* 1 LEG.HIST. at 569; 93 Cong. Rec. 6380 (1947) (conference report).

C. While The Court Has Authority Pursuant To Section 301 To Fashion A Federal Common Law Of Contract Enforcement, It Should Reject Petitioner’s Invitation To Re-Write That Section To Include Tort Claims Against Non-Parties That Have No Contractual Obligations.

1. In *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957), the Court was presented with the question of whether, pursuant to Section 301, federal courts can order specific performance of a CBA’s arbitration provision. Prior to *Lincoln Mills*, some courts concluded that Section 301 did not grant such authority. See 353 U.S. at 450-51. The Court, however, held to the contrary because it found that in order to effectuate the purpose of Section 301—holding the parties to their collective bargaining agreements—federal courts were empowered to fashion a federal common law for the enforcement of such contracts based on “the policy of our national labor laws.” *Id.* at 454-56.

Petitioner asks the Court, in the guise of fashioning a federal common law of *contract enforcement*, to interpret Section 301 to permit tort claims against non-parties that have no duties that are created by the CBA at issue—*i.e.*, no contract obligations *that can be enforced against them*. But the Court has warned that:

Lincoln Mills did not envision any freewheeling inquiry into what the federal courts might find to be the most desirable rule, irrespective of congressional pronouncements. Rather, it is clear that in fashioning federal law under § 301(a)

substantial deference should be paid to revealed congressional intention.

Complete Auto Transit, 451 U.S. at 406 (quotation marks and citation omitted). As the Seventh Circuit has cogently explained:

[W]hile there is much talk in the cases of judicial responsibility to create a federal common law of *collective bargaining agreements* under Section 301, the qualification that we have italicized is crucial. The common law to be made is a law of contracts, not a source of independent rights, let alone tort rights; for section 301 is . . . a grant of jurisdiction **only to enforce contracts**.

Brazinski v. Amoco Petroleum Additives Co., 6 F.3d 1176, 1180 (7th Cir. 1993) (Posner, J.) (citation omitted) (italics in original; bold added).

The Court has had occasion to invoke the authority of *Lincoln Mills* in cases regarding claims by individuals who, while not direct parties to the contract, nevertheless had important rights that were created by it. Its holdings under Section 301 have been limited to permitting the enforcement of such third-party beneficiary rights. *See, e.g., Smith v. Evening News Ass'n*, 371 U.S. 195, 200 (1962) (employees may sue employer to enforce their contractual rights under collective bargaining agreement); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976) (same).²³ Thus, the Court has remained true to the

²³ Contrary to Petitioner's and its *amicus's* intimation (Pet'r Br. at 48-49, 54-55), *Hechler*, 481 U.S. 851, *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985), and *Atkinson*, 370 U.S. 238, did not recognize a tort claim under Section 301. Rather, they held that the employees' tort claims were *preempted* by Section 301. 481 U.S. at 860-62; 471 U.S. at 210-11; 370 U.S. at 245-49.

“revealed congressional intention” (*Complete Auto Transit*) of Section 301 that suits for the enforcement of contractual rights and duties can be brought in federal court under Section 301; and nine circuits (including the Ninth Circuit in this case) have correctly refused to construe *Lincoln Mills* as authorization to extend Section 301 beyond the enforcement of labor agreements by parties and third-party beneficiaries, to include claims for tortious interference against non-parties that have no duties under the agreement. *See* n.15, *supra*.²⁴

Although *Hechler* held that a union member can bring a Section 301 breach of contract claim against her union *if* the union voluntarily assumed contractual duties toward members (481 U.S. at 861-62), the Court has since cautioned that a member “must be able to point to language in the collective-bargaining agreement specifically indicating an intent to create obligations enforceable against the union by the individual employees.” *United Steelworkers v. Rawson*, 495 U.S. 362, 374-75 (1990) (plaintiffs in Section 301 suit against union cannot use tort law to supplement the duties arising out of the contract). And although the Court in *Textron* noted that an allegation of tortious inducement could be raised in a Section 301 suit, it found that is proper only as an affirmative defense to an *action to enforce a contract*. 523 U.S. at 658.

²⁴ Contrary to Petitioner’s assertion, the International is not claiming “immunity” because of “its third party non-signatory status.” Pet’r at 58. Rather, Petitioner cannot bring a claim against the International under Section 301 because the International has no duties under the CBA. Circuit courts, including the Ninth Circuit, have held that Section 301 authorizes claims against non-parties who do have contractual obligations, *i.e.*, third-party obligors. *See, e.g., Painting & Decorating Contractors Assoc. of Sacramento, Inc. v. Painters & Decorators Jt. Comm. of the East Bay Counties*, 707 F.2d 1067 (9th Cir. 1983) (joint labor-management committee created by the contract to administer its provisions is a proper defendant where it is indispensable to the appropriate remedy); *Whelan v. Colgan*,

2. Limiting Section 301 to claims for the enforcement of contractual obligations accords deference to the role of Congress in fashioning norms of federal labor policy. A breach of contract claim pursuant to Section 301 simply enforces rights and obligations privately created and defined by the mutual assent of employers and unions that have engaged in the process of collective bargaining mandated by federal labor statutes. *See* 29 U.S.C. §§ 158(a)(5), (b)(3), (d).²⁵ In practice, Section 301 suits almost always involve the enforcement of contractual rights and obligations through the arbitration provision of the CBA. The reason is that a CBA typically defines an arbitrable “grievance,” as the Granite Rock-Local 287 contract does, to be a “dispute[] arising under [the] agreement,” and provides that all such disputes must be “resolved in accordance with the [grievance] procedure,” which terminates in final and binding arbitration. JA 434; *see* Elkouri & Elkouri, *HOW ARBITRATION WORKS* 128-30 (Alan Miles Ruben ed., 6th ed. 2003). As the Court has noted, the “undertaking by the employer to submit grievances to the process of arbitration” is the “quid pro quo” for the union’s “no strike obligation.” *Boys Market, Inc. v. Retail Clerks Union No. 770*, 398 U.S. 235, 248 (1970). “Arbitrators are delegated by nearly all collective-bargaining agreements as the adjudicators

602 F.2d 1060 (2d Cir. 1979) (trustees of trust created by collective bargaining agreement are proper defendants).

²⁵ *See, generally*, 1 Richard A. Lord, *WILLISTON ON CONTRACTS* § 1:1, p. 8 (4th ed. 2007) (“The goal of contract law is to hold parties to their agreements so that they receive the benefits of their bargain.”); *RESTATEMENT (SECOND) OF CONTRACTS* 1 (1981) (volume one introduction) (“The Restatement of this Subject deals in general with the legal relations arising from promises and the remedies available when a promise is broken.”).

of contract disputes.” *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 411 n.11 (1988) (citing report that arbitration is required in ninety-nine percent of sample contracts). The Court has read Section 301

to authorize the development of federal common-law rules of decision, in large part to assure that agreements to arbitrate grievances would be enforced, regardless of the vagaries of state law and lingering hostility toward extrajudicial dispute resolution, *see* [*Lincoln Mills*, 353 U.S. at 455-456]; *see also* [*Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *Avco Corp. v. Machinists*, 390 U.S. 557, 559 (1968)] (“§ 301 . . . was fashioned by Congress to place sanctions behind agreements to arbitrate grievance disputes.”).

Livadas v. Bradshaw, 512 U.S. 107, 122 (1994).

The enforcement of grievance/arbitration provisions voluntarily agreed to by the parties to a CBA does not involve the courts in establishing norms in critical areas of federal labor policy such as the recognition of unions, the scope of bargaining units, mandatory subjects of bargaining, the duty to bargain in good faith, or the economic weapons that labor and management can employ. In contrast, the type of tort claim *Granite Rock* urges the Court to sanction raises precisely that danger. Like all torts, liability for tortious interference is not premised on a contractual duty, but instead is based on “[a] violation of a *duty imposed by general law or otherwise upon all persons . . .*” BLACK’S LAW DICTIONARY 1036 (abridged 6th ed. 1991) (emphasis added). *Granite Rock* acknowledges that its claim against the International “derive[s] from a general rather than contractual duty.” Ninth Cir. Opening Br. at 33. Torts involve

issues of public policy. See RESTATEMENT (SECOND) OF TORTS § 1, p. 3 (1965) (cmt. d). In order for a parent union or parent employer to be held liable for tortious interference, a court (or jury) must determine that its “interference [was] improper.” *Id.* § 766 cmt. c. In making that determination, the trier of fact must weigh “[t]he plaintiff’s interest in his contractual rights . . . against the defendant’s interest in freedom of action The issue is whether in the given circumstances [defendant’s] interest and the social interest in allowing the freedom claimed by [defendant] are sufficient to outweigh the harm that his conduct is designed to produce.” *Id.*; *id.* § 767; see *Amicus Associated General Contractors Br.* at 38 (to determine if a non-signatory’s conduct is “improper,” a court should consider “the social interests in protecting the freedom of action of the non-signatory and the contractual interests of the parties”).

Congress, however, has determined that the balancing process involved in determining important substantive issues of labor law should not be made by courts through the application of common law principles, but rather should be made by Congress when it legislates specialized statutes dealing with labor-management relations. Indeed, Congress enacted the Norris-LaGuardia Act (29 U.S.C. §§ 101 *et seq.*), the NLRA, and other labor statutes in response to the manner in which labor relations issues had been dealt with by courts. See *BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 543 (2002) (in passing early labor statutes “Congress hoped to substitut[e] the opinion of Congress as to the propriety of the purpose [of union activities] for that of differing judges”; “Similar objectives informed Congress’ later enactment of the NLRA, which took from the courts much of the power to regulate the relations between

employers of labor and workingmen by granting authority to an administrative agency.” (quotation marks and citations omitted)); *United States v. Hutcherson*, 312 U.S. 219, 229-31 (1941) (describing series of statutes enacted to narrow role of federal courts in labor relations); 1 THE DEVELOPING LABOR LAW 4 (John E. Higgins, Jr., ed., 5th ed. 2006) (describing “[t]he inability of the courts to provide viable solutions to the problems presented by the labor movement”); *United Mine Workers v. Pennington*, 381 U.S. 676, 709 (1965) (Goldberg, J., dissenting from opinion but concurring in judgment) (“[H]istory shows a consistent congressional purpose to limit severely judicial intervention in collective bargaining . . . and, rather, to deal with what Congress deemed to be specific abuses on the part of labor unions by specific proscriptions in the labor statutes”).

The day-to-day enforcement of the labor laws enacted by Congress has been entrusted primarily to the National Labor Relations Board, the agency with relevant expertise. *See, e.g., NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 236 (1963):

[W]e must recognize the Board’s special function of applying the general provisions of the Act to the complexities of industrial life . . . and of (appraising) carefully the interests of both sides to any labor management controversy in the diverse circumstances of particular cases from its special understanding of the actualities of industrial relations. The ultimate problem is the balancing of the conflicting legitimate interests. The function of striking that balance to effectuate national labor policy is often a difficult and delicate responsibility, which the Congress

committed primarily to the National Labor Relations Board, subject to limited judicial review.

Accord NLRB v. Insurance Agents' Int'l Union, 361 U.S. 477, 498 (1960); *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242 (1959).

As discussed *supra*, Congress did create in Section 301 a narrow jurisdiction for federal courts to decide “[s]uits for violation of contracts,” primarily to enforce grievance and arbitration procedures collectively bargained by unions and employers in accordance with labor laws enacted by Congress. But since the passage of federal laws governing labor-management relations, federal courts have *not* engaged in fashioning a common law of labor torts to regulate the conduct of unions and employers. As the Restatement of Torts (Second) explained, it omitted entirely the chapter that previously had been devoted to labor disputes because:

Obviously, the law of labor disputes and their effect in interfering with contractual relations has ceased to be regarded as part of Tort Law and has become an integral part of the general subject of Labor Law, with all of its statutory and administrative regulations, both state and federal.

RESTATEMENT (SECOND) OF TORTS Div. 9 Introductory Note (1977); *see also* PROSSER & KEETON §130 at 1027 (“[T]he general preemption of the field by the federal government . . . ha[s] substantially eliminated the traditional role of tort law in dealing with the economic results of the labor activity.”).

As noted earlier, while Congress did create tort-like remedies in the LMRA to deal with certain types of interference by unions with an employer’s business

relations, it specifically rejected creating an unfair labor practice that would have dealt with the very conduct that Granite Rock wishes to litigate in federal court. *See supra* at Section II.B.2. As we discuss next, permitting tort claims under Section 301 would require federal courts to resolve a wide variety of issues in creating a federal common law of tortious interference with contract that would involve them in making precisely the type of policy decisions regarding labor law that Congress has entrusted to itself and the National Labor Relations Board. As Justice Stevens correctly recognized in his concurrence in *Textron*:

The rules governing disputes that arise out of the collective-bargaining process are within the special competence of the National Labor Relations Board. The fact that the Board undoubtedly has more expertise in the collective-bargaining area than federal judges provides an additional reason for concluding that Congress meant what it said in § 301(a) and for rejecting [a] broad reading of the “[s]uits for violation of contracts” language.

Textron, 523 U.S. at 662 (Stevens, J., concurring) (citation omitted).

D. Permitting Tort Claims Under Section 301 Would Require Courts To Create A Common Law Of Tort That Would Allow Parties To Evade Their Agreement To Arbitrate Disputes Over The Meaning And Application Of A Collective Bargaining Agreement, And That Could Extend Liability Not Only To Parent Unions, But To Parent Corporations, Customers Of Employers, And A Wide Range Of Other Strangers To The Collective Bargaining Agreement.

1. Petitioner offers the ominous prediction that nothing less than wholesale “industrial chaos” will result if the Court affirms the ruling by the Ninth Circuit that tortious interference claims are not cognizable under Section 301. This hyperbole is baseless. At least as early as 1954, courts held that Congress did not intend to provide a cause of action for tortious interference claims against third parties. *See, e.g., Square D Co. v. United Elec. Workers*, 123 F.Supp. 776 (E.D. Mich. 1954) (dismissing claim that international union induced strike in violation of local’s collective bargaining agreement). During the next half-century, circuit after circuit reached the same conclusion that is now effectively the law in at least 40 states, and has been the law in most of them for many years. *See* n.15, *supra*. If the holdings by those courts would truly lead to industrial chaos, it surely would have been apparent long before the Ninth Circuit followed their lead.²⁶

²⁶ Indeed, in 1946, there were 4,985 strikes. H.R. Rep. No. 80-245 at 4, *reprinted in* 1 LEG.HIST. at 295. In the five years between 2004 and 2008, the average number of work stoppages

The task of creating a federal common law of tortious interference will be extremely complex and burdensome. Prosser and Keeton describe the existing state law of tortious interference with contract as “leaving a rather broad and undefined tort in which no specific conduct is proscribed and in which liability turns on the purpose for which the defendant acts, with the indistinct notion that the purposes must be considered improper in some undefined way.” PROSSER AND KEETON ON THE LAW OF TORTS § 129, at 979 (5th ed. 1984). Federal courts would have to immerse themselves in this amorphous field of law that is far-removed from breach of contract litigation with which they are familiar. While many of the issues that might arise cannot be anticipated, numerous other issues are readily apparent from the many conflicts that currently exist under common law of the various states. Such differences include the scope of the claim,²⁷ the statute of limitations,²⁸

that began during each year was only 232.4 (without adjusting for population growth). Federal Mediation & Conciliation Service, 2008 ANNUAL REPORT 7 (2008), *available at* http://fmcs.gov/assets/files/annual%20reports/FY2008_Annual_Report.pdf (last visited Oct. 22, 2009). Thus, it can hardly be said that the absence of a claim for tortious interference has “brought our country to the brink of economic paralysis.” Pet’r Br. at 39 (quotation marks and citation omitted).

²⁷ Louisiana, for example, only recognizes tortious interference with contract in very limited instances of claims against corporate officers. *See 9 to 5 Fashions, Inc. v. Spurney*, 538 So.2d 228, 234 (La. 1989).

²⁸ Two years: *CGB Occupational Therapy, Inc. v. RHA Health*, 357 F.3d 375, 383 (3rd Cir. 2004) (Pennsylvania law); *Burke v. Insurance Auto Auctions Corp.*, 169 S.W.3d 771, 776 (Tex. App. 2005). Three years: *Pure Distributions, Inc. v. Baker*, 285 F.3d 150, 154-55 (1st Cir. 2002) (Massachusetts law); *Quality Optical of Jonesboro, Inc. v. Trusty Optical, LLC*, 225 S.W.3d 369, 372

whether the interference must be intentional or merely knowing,²⁹ what constitutes “improper” interference,³⁰ whether and to what degree motive matters,³¹ whether plaintiff must establish improper conduct (*i.e.*, without justification) or whether justification is an affirmative defense,³² and how to define

(Ark. 2006). Four years: *Hroch v. Farmland Indus., Inc.*, 548 N.W.2d 367, 371 (Neb. Ct. App. 1996). Six years: *Fraser v. Bovino*, 721 A.2d 20, 25 (N.J. Super. Ct. App. Div. 1998).

²⁹ Compare *McLinden v. Coco*, 765 N.E.2d 606, 617 (Ind. Ct. App. 2002), and *J.J. Indus., LLC v. Bennett*, 71 P.3d 1264, 1268 (Nev. 2003), with *DiGiorgio Cop. v. Mendez & Co., Inc.*, 230 F. Supp. 2d 552, 564 (D.N.J. 2002), and *Neider v. Franklin*, 844 So.2d 433, 437 (Miss. 2003), and *Quelimane Co. v. Stewart Title Guar. Co.*, 960 P.2d 513, 19 Cal. 4th 26, 56 (1998).

³⁰ See Dan B. Dobbs, THE LAW OF TORTS § 446, at 1263 (2001) (“In neither the interference with contract nor interference with opportunity torts have courts been able to provide any concept of what counts as wrongful or improper. Many decisions are so vague about what is ‘wrong’ that the judicial process itself is sometimes dubious in these cases.”).

³¹ Compare *Texas Beef Cattle Co. v. Green*, 921 S.W.2d 203, 211 (Tex. 1996), and *Harman v. Heartland Food Co.*, 614 N.W.2d 236, 242 (Minn. Ct. App. 2000), with *United Truck Leasing Corp. v. Geltman*, 551 N.E.2d 20, 22-24 (Mass. 1990), with *Harrison v. NetCentric Corp.*, 744 N.E.2d 622, 632 (Mass. 2001); *Alyeska Pipeline Serv. Co. v. Aurora Air Serv., Inc.*, 604 P.2d 1090, 1094 (Ala. 1979), and with *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass’n*, 670 N.W.2d 569, 580 (Mich. Ct. App. 2003).

³² Compare *United Truck Leasing Corp.*, 551 N.E.2d at 23-24, and *Mason v. Wal-Mart Stores, Inc.*, 969 S.W.2d 160, 164-65 (Ark. 1998), and *Sheaffer v. State ex rel. Univ. of Wyo.*, 202 P.3d 1030, 1044 (Wyo. 2009), with *Texas Beef Cattle*, 921 S.W.2d at 210, and *Roy v. Coyne*, 630 N.E.2d 1024, 1030-31 (Ill. App. Ct. 1994), and *Parsons v. Aaron*, 849 So.2d 932, 946 (Ala. 2002).

malice and justification.³³ There is no uniform state common law view on these issues.

As Justice Scalia has noted in a different context, if the Court were to announce a “new, immediately applicable, federal common law of torts” where existing state laws vary significantly, “the parties and lower federal judges confronted by the new ‘common law’ [would] have barely a clue as to what its content might be.” *Jaffee v. Redmond*, 518 U.S. 1, 27 (1996) (Scalia, J., dissenting). Such will be the case if the Court overturns a half-century of nearly unanimous circuit law and recognizes tortious interference claims under Section 301; and in creating a uniform common law of tortious interference, federal courts will be required to establish substantive norms regarding labor-management relations, contrary to the wish of Congress.

2. Aside from the new and complicated issues that federal district courts would be required to decide, “federalizing” tortious interference claims under Section 301 would also increase the courts’ dockets. For example, an employee who had been terminated could decide not to proceed with a grievance under the CBA against his employer, but instead to file a

³³ Varying definitions of malice: *Compare Scruggs, Millette, Bozeman & Dent, P.A. v. Merkel*, 910 So. 2d 1093, 1100 (Miss. 2005), and *Winkler v. V.G. Reed & Sons, Inc.*, 638 N.E.2d 1228, 1235-36 (Ind. 1994), with *DiGiorgio Corp.*, 230 F. Supp. 2d at 559, and *St. Mary’s Hosp. of Athens, Inc. v. Radiology Prof. Corp.*, 421 S.E.2d 731, 124 (Ga. Ct. App. 1992). Varying definitions of justification: *Compare Ocean State Phys. Health Plan, Inc. v. Blue Cross & Shield of Rhode Island*, 883 F.2d 1101, 1113 (1st Cir. 1989), and *Area Landscaping, LLC v. Glaxo-Wellcome, Inc.*, 586 S.E.2d 507, 510 (N.C. Ct. App. 2003), with *White Plains Coat & Apron Co., Inc. v. Cintas Corp.*, 8 N.Y.3d 422, 425 (N.Y. 2007), and *Chaves v. Johnson*, 230 Va.112, 121 (Va. 1985).

tortious interference suit in federal court against his employer's parent entity, claiming that it was actually responsible for his termination in violation of the CBA's "just cause" provision.³⁴ Aside from the tortious interference issues listed above, the district court would also have to decide whether there was a breach of the CBA, since it would be an element of the tortious interference claim. The court (or a jury) would have to decide whether the termination was for just cause. Thus, federal judges or juries would be dragged into deciding run-of-the-mill discharge litigation issues that normally are resolved by arbitrators, but could not be in the tortious interference context because the parent company would not be a party to the CBA and therefore could not invoke arbitration under that agreement.

In fact, even if the employee did file a grievance against his employer, in addition to bringing a tortious interference claim against the employer's parent, the issue of whether the termination was for just cause might still have to be decided in district court. If the grievance were resolved in the employee's favor by an arbitrator pursuant to the CBA, the parent (assuming it did not have an agency or alter-ego relationship with its subsidiary) would not be bound by the arbitrator's decision and therefore could litigate the propriety of the discharge anew in district court.

³⁴ At common law, a party whose contract has been breached need not pursue its breach of contract claim against the other party to the agreement in order to pursue a tortious interference claim against a non-party. *See* 2 Dobbs, *THE LAW OF TORTS* § 445, p. 1258 (2001); *see also* *THE RESTATEMENT (SECOND) OF TORTS* § 774A(2) (plaintiff can seek full recovery from tortfeasor).

Employees who are terminated would always have an incentive to file a tortious interference action in federal court against a parent company, supervisor, customer or some other non-party whom they claimed was responsible for their discharge. First, the employees could bypass the CBA's grievance/arbitration procedure controlled by the union, which can refuse to take the employee's termination grievance to arbitration as long as it does not violate its duty of fair representation by acting in an arbitrary, discriminatory or bad faith manner. *See Vaca v. Sipes*, 386 U.S. 171, 190-92 (1967). Second, at arbitration employees generally can only recover lost wages and benefits (Elkouri & Elkouri, *supra*, at 1205), while in a tort action they can also seek to recover consequential and punitive damages. Third, by suing the parent entity, employees can pursue a "deep pocket." These last two considerations will also lead employers (as in this case) to bring tortious interference cases against international unions.

Finally, having the same claim litigated in two different fora will present complicated procedural issues and result in duplicative litigation of various issues. Assume in this case that the Court were to hold that Section 301 permits Granite Rock's tortious interference claim against the International to proceed in federal court, and that an arbitrator should decide in Granite Rock's claim against Local 287 whether the CBA was ratified on July 2, 2004 and, if so, whether there was a breach of the CBA and, if so, what damages if any Granite Rock suffered as a result of the breach. Should the tort action against the International proceed before the arbitrator rules? Or should the tort action be stayed until the arbitrator decides whether there was a contract in effect at the time of the strike and

whether there was a breach of contract by Local 287? If the arbitrator were to hold in the affirmative on both of those issues, the International would have a right to re-litigate them in court, since it is not an agent or alter-ego of Local 287 and has not had its day in court as to those issues. If the arbitrator were to determine that the damages sustained by Granite Rock were \$50,000, the International would also have a right to re-litigate that issue in district court, and \$50,000 would be the ceiling for damages that could be awarded to Granite Rock against the International.

3. Expanding Section 301 jurisdiction to include claims for tortious interference will also subject a wide range of non-party defendants to suits by employees, unions, employers, and others. A review of cases in which Section 301 has been held to preempt state law tortious interference claims, or where courts have rejected tortious interference claims brought directly under Section 301, reveals the wide variety of such claims and of the possible plaintiffs and defendants. They include tortious interference claims by employees against supervisors;³⁵ by employees against their employer's contractors;³⁶ by employees against labor consultants hired by employers;³⁷ by employees and unions against

³⁵ See, e.g., *Magerer v. John Sexton & Co.*, 912 F.2d 525 (1st Cir. 1990); *Steinbach v. Dillon Cos.*, 253 F.3d 538 (10th Cir. 2001); *Turner v. Federation of Teachers Local 1565*, 138 F.3d 878 (11th Cir. 1998).

³⁶ See, e.g. *Serv., Hosp., Nursing Home & Pub. Employees Union, Local No. 47*, 755 F.2d 499 (6th Cir.); cf. *Baylis v. Marriott Corp.*, 906 F.2d 874 (2d Cir. 1990) (Railway Labor Act preemption).

³⁷ See, e.g., *Loss v. Blankenship*, 673 F.2d 942 (7th Cir.).

their employers' parent or controlling companies, or their owners individually;³⁸ by employees against unions;³⁹ by employees and unions against employers' clients or customers, and employees of customers;⁴⁰ by employees against co-workers;⁴¹ by employees against trustees and attorneys;⁴² by unions against trade organizations;⁴³ and by unions against employers' creditors.⁴⁴ In short, the wide variety of tortious interference claims that have been brought in both federal and state courts against a broad array of third-party defendants, and that have been dismissed since the enactment of Section 301 either on the basis of lack of jurisdiction under that section or preemption pursuant to that section, will find a new home in federal court. A tortious interference claim will become the weapon of choice for employers, unions and employees who wish to expand a contract dispute and seek punitive damages against a "deep pocket" defendant.

³⁸ See, e.g., *Covenant Coal*, 977 F.2d 895 (4th Cir.); *Milne Employees Ass'n*, 960 F.2d 1401 (9th Cir.).

³⁹ See, e.g., *Beidleman v. The Stroh Brewery Co.*, 182 F.3d 225 (3d Cir. 1999).

⁴⁰ See, e.g., *Kimbrow v. Pepsico, Inc.*, 215 F.3d 723 (7th Cir. 2000); cf. *Dougherty v. Parsec, Inc.*, 872 F.2d 766 (6th Cir. 1989).

⁴¹ See, e.g., *Decoe v. General Motors, Corp.*, 32 F.3d 212 (6th Cir. 1994); *Johnson v. Anheuser Busch, Inc.*, 876 F.2d 620 (8th Cir. 1989).

⁴² Cf. *Bowers*, 393 F.2d 421 (1st Cir.).

⁴³ See, e.g., *Carpenters Local Union No. 1846*, 690 F.2d 489 (5th Cir.).

⁴⁴ See, e.g., *Quality Plus Stores, Inc.*, 961 F.2d 904 (10th Cir.).

E. There Is No Basis For Petitioner’s Suggestion That The Court Should Disrupt The Rights And Remedies Congress Created Under Section 301.

Paraphrasing *Marbury v. Madison*, Petitioner invokes the maxim “for every wrong, there is a remedy.” Pet’r Br. at 54. This principle, Petitioner suggests, should lead the Court to abrogate over fifty years of near-unanimous lower court rulings, and hold that tort claims can be brought in federal court under Section 301. Granite Rock’s contention ignores two critical points.

First, Congress *did* provide Petitioner with remedies for the alleged breach of contract by Local 287. Granite Rock had a contractual remedy against Local 287 pursuant to the CBA’s grievance and arbitration procedure and, as the Court held in *Lincoln Mills*, Granite Rock could enforce that procedure through Section 301. Through arbitration, Granite Rock could recover all damages caused by any breach of the CBA by Local 287. Additionally, in 29 U.S.C. § 158(b)(3), Congress provided Granite Rock with an unfair labor practice charge that it pursued against Local 287 before the NLRB. *See supra* n.1; *see also Associated Gen. Contractors of Minn.*, 290 NLRB 522, 534 (1988) (strikes undertaken in violation of a no-strike provision and intended to force an employer to agree to new contractual provisions may constitute an unfair labor practice under 29 U.S.C. § 158(b)(3)).

The second flaw with Petitioner’s *Marbury v. Madison* argument is that the actual words used by Chief Justice Marshall were: “*where there is a legal right, there is also a legal remedy.*” 5 U.S. 137, 163 (1803) (quoting Blackstone) (emphasis added). If Congress in Section 301 did not provide a tort right against

non-parties that have no obligations under a CBA, the principle of *Marbury* is not applicable.

As discussed *supra*, Congress has regulated the field of labor-management relations through the NLRA, as amended by the LMRA, and has created certain exclusive federal rights and remedies that are not coextensive with the analogous rights and remedies provided under state law. Congress has also preempted many state law rights and remedies.⁴⁵ Congress has thereby crafted a balance of rights and remedies that in its judgment best promotes national labor policy; protected those rights from interference by the states; and divided the enforcement of those federal rights and remedies between the NLRB and the federal courts. The Court has repeatedly cautioned against upsetting this congressional balance. *See, e.g., Lodge 76, Int'l Ass'n of Machinists v. Wisc. Employment Relations Comm'n*, 427 U.S. 132, 155 (1976) (certain areas must be “free of regulation” if “congressional intent in enacting the comprehensive federal law of labor relations is not to be frustrated”); *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 239, 244 (1959) (“comprehensive regulation of industrial relations by Congress” requires preemption where states seek to “control conduct which is the subject of national regulation [because permitting state regulation] would create potential frustration of national purposes”); *South Prairie Constr. Co. v. Local*

⁴⁵ For example, prior to congressional regulation of labor relations, some states permitted unions to engage in “secondary boycotts” against employers with which they had disputes. *See, e.g., Imperial Ice Co.*, 18 Cal.2d at 35; *Pierce*, 156 Cal. at 76-77. As noted above, in the LMRA Congress generally prohibited this weapon that unions had previously enjoyed. *See* 29 U.S.C. §§ 158(b)(4)(B), 187.

No. 627, Int'l Union of Operating Eng'rs, 425 U.S. 800 (1976) (courts should not decide representation issues that come within the NLRB's primary jurisdiction). In some circumstances, employers, unions or employees are left *completely* remediless, because that is part of the careful balance that Congress struck.⁴⁶ The pre-emptive effect is similar to that which exists in other areas of law, where Congress also decided to regulate a field and preempt state law causes of action, while it circumscribed the rights and remedies available under federal statutes. *See, e.g., Riegel v. Medtronic, Inc.*, 552 U.S. 312, 128 S.Ct. 999 (2008) (Food, Drug, and Cosmetic Act); *Aetna Health Inc. v. Davila*, 542 U.S. 200, 222 (2004) (Ginsburg, J., concurring) (ERISA creates a "host of situations in which persons adversely affected by ERISA-proscribed wrongdoing cannot gain make-whole relief"); *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995) (Airlines Deregulation Act); *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658 (1993) (Federal Railroad Safety Act).

Such decisions are for Congress to make, and they should be left to that branch of government to revisit if it wishes, as it did when it amended the NLRA by enacting the LMRA. *Cf. Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985); *Riegel*, 552 U.S. 312, 128 S.Ct. at 1009 ("It is not our job to speculate

⁴⁶ *See, e.g., Complete Auto Transit*, 451 U.S. at 407-08 (Section 301(b) shields individual employees from liability for their breach of the no-strike clause and holds the union liable only if it participates in or authorizes the strike; "Congress intended this result even though it might leave the employer unable to recover for his losses"); *Rawson*, 495 U.S. at 371-75 (union members' state-law tort claim against union preempted by Section 301, and no Section 301 contract claim exists because nothing in agreement created any relevant right that could be enforced by members).

upon congressional motives.”). As the Ninth Circuit properly held: “If Congress did not provide a remedy for Granite Rock directly against [the International] on its asserted tortious interference claim, then that is an issue to be addressed by Congress, not by an extraordinary and outlier interpretation of the governing statute.” JA 54-55.

CONCLUSION

For all of the above reasons, the Court should affirm the decision of the Ninth Circuit with regard to Granite Rock’s claim against the International.

Respectfully submitted,

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