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

AMICUS BRIEF OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Associated General Contractors of America, Inc. ("AGC") is among the largest and oldest of the trade associations in the construction industry and by far the most diverse. It was founded in 1918 at the express request of President Woodrow Wilson, and today it has 95 chapters and more than 33,000 members across the country. Among its members are more than 7,500 general construction contractors, 12,500 specialty contractors, and 13,000 material suppliers and service providers. Its members undertake a great variety of construction projects, including commercial buildings, apartment buildings, condominiums, factories, warehouses, highways, bridges, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects and defense facilities. AGC members also install utilities and otherwise prepare sites for the construction of single-family homes. Most

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[1] Pursuant to Rule 37.2, counsel for the amicus certifies that counsel of record for all parties received timely notice that the amicus intended to file an amicus curiae brief in support of the Petitioner at least ten days prior to the due date for the amicus curiae brief. Letters reflecting the parties' consent to the filing of this amicus curiae brief are being lodged with the Clerk of the Court. Pursuant to Rule 37.6, counsel for the amicus states that no counsel for a party authored this brief in whole or in part and that no person other than the amicus, its members, and its counsel made a monetary contribution to the preparation or submission of this brief.

AGC members are closely held and remain small, but others are publicly traded and among the nation's largest corporations.

AGC spans the entire spectrum of labor-management relations in the construction industry. While many AGC members are open shop companies, many others are union firms that (either individually or as members of multi-employer bargaining units) negotiate and work under collective bargaining agreements. Still other members are hybrids, performing some work open shop and other work (perhaps in other parts of the country) under collective bargaining agreements. The unions with which AGC members regularly deal include the local and international unions representing carpenters, laborers, ironworkers, cement masons, operating engineers and teamsters.

Most of AGC's chapters and all of the union contractors among AGC's members have a direct and immediate interest in the nature and scope of the federal common law remedies available to them under § 301(a) of the Labor Management Relations Act ("LMRA").

Collective bargaining in the construction industry often involves many more than the two parties to the ultimate agreement, including parties (like the international union in this case) that have a significant interest in the agreement but do not hold specific rights or obligations under the agreement. Likewise, the implementation of a collective bargaining agreement often involves both the signatories to the agreement and non-signatories who have an

interest in the agreement and the power to cause a violation of the terms of the agreement.

Like *all* union contractors, AGC members who negotiate and work under labor agreements rely upon them and have a strong interest in ensuring that both signatories and non-signatories are accountable for culpable conduct that causes a violation of signatories' contractual rights. AGC believes that § 301(a) provides federal courts with jurisdiction and authority to decide a claim against a non-signatory under the properly pleaded facts of this case.[2]

On many prior occasions, AGC has sought to help both the courts and the National Labor Relations Board shape the unique body of federal law governing labor-management relations in the construction industry. As an amicus curiae, AGC participated in *Connell Constr. Co., Inc. v. Plumbers & Steamfitters Local Union No. 100*, 421 U.S. 616 (1975); *John Deklewa & Sons,* 282 NLRB 1375 (1987), *enforced sub nom. International Ass'n of Bridge, Structural and Ornamental Iron Workers, Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988); *Brannan Sand & Gravel Co.*, 289 NLRB 977 (1988); *Mesa Verde Constr. Co. v. Northern California Dist. Council of Laborers*, 861 F.2d 1124 (9th Cir. 1988); *Steiny & Co., Inc.*, 308 NLRB 1323 (1992);

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[2] While AGC and its members have an interest in both of the questions presented, they have a much greater interest in the second question and therefore devote this brief entirely to that question.

Building & Constr. Trades Council v. Associated Builders & Contractors of Mass./R.I., Inc., 507 U.S. 218 (1993); *NLRB v. Town & Country Elec., Inc.*, 516 U.S. 85 (1995); *New York State Chapter, Inc., AGC v. New York State Thruway Authority*, 666 N.E.2d 185 (N.Y. 1996); *Brown v. Pro Football, Inc.*, 518 U.S. 231 (1996); *Associated General Contractors of America v. Metropolitan Water Dist. of S. California*, 159 F.3d 1178 (9th Cir. 1998); *Granite Construction Co.*, 330 NLRB 205 (1999); and *Glens Falls Building & Construction Trades Council*, 350 NLRB 417 (2007). As a broad association, representing both the open shop and the union sectors of the construction industry, AGC is in a unique position to assist this Court with its consideration of the pending Petition.

SUMMARY OF ARGUMENT

In keeping with this Court's prior opinions, which have consistently construed § 301(a) to authorize and require the federal courts to fashion a body of federal common law to deter and redress violations of labor agreements, the Court should hold that a signatory to a labor agreement may bring an action under § 301(a) against a non-signatory, including one possessed of neither rights nor obligations under the agreement, if in fact that person or entity directly, intentionally, and improperly caused a violation of the agreement.

Such a ruling would be consistent with the text of § 301(a), which plainly grants federal courts the power to hear all "[s]uits for violation of contracts between an employer and a labor

organization representing employees in an industry affecting commerce." It also would flow logically and naturally from this Court's jurisprudence construing § 301(a) broadly to give federal courts the power and responsibility to craft a body of federal common law recognizing such causes of action and providing such remedies as the federal courts find necessary to achieve Congress's paramount goals of (1) uniformity in the construction and enforcement of collective bargaining agreements, (2) effective protection of the rights and expectations of parties to such agreements, and (3) both deterrence of and redress for conduct that violates such agreements.

The Ninth Circuit's contrary decision to deny Petitioner a federal remedy under § 301(a) against the International Brotherhood of Teamsters ("IBT") does not withstand analysis under this Court's prior precedents. The Ninth Circuit's opinion holds that § 301(a) recognizes a cause of action only against signatories to such agreements and others possessing express rights or obligations under such agreements. This narrow reading of § 301(a) has no basis in the text of the statute or in this Court's jurisprudence, and it threatens to leave parties to labor agreements (like the Petitioner and many of AGC's members) without a meaningful remedy under either federal or state law for misconduct that directly and intentionally contravenes a collective bargaining agreement.

More than fifty years ago, in *Textile Workers Union of America v. Lincoln Mills*, 353 U.S. 448 (1957), the Court stated that complaints for

alleged violations of collective bargaining agreements should "be solved by looking at the policy of [§ 301(a)] and fashioning a remedy that will effectuate [the collective bargaining] process." Wisely, the Court added that "the nature of the problem" should govern "[t]he range of judicial inventiveness." *Id.* at 456-57.

In the years since *Lincoln Mills*, the Court has continued to develop a uniform body of federal common law under § 301(a) to facilitate collective bargaining and to ensure that the resulting agreements have their intended effect. That same common law approach strongly supports a § 301(a) action against a non-signatory under the facts of this case, where the complaint alleges that the non-signatory: (1) actively participated in the negotiation of a collective bargaining agreement; (2) knew of the existence of the agreement; (3) possessed the power to cause a violation of the agreement; (4) intentionally and improperly exercised that power, and directly caused a violation of the agreement; and (5) was motivated by a desire to acquire rights and benefits primarily if not exclusively for itself. To "exclude" such a claim from the "ambit of §301(a)" would "stultify the congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantitive law." *Smith v. Evening News Ass'n*, 371 U.S. 195, 200-01 (1962).[3]

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[3] Of course, finding a cause of action under § 301 is quite different from finding liability. Even if this Court found a

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ARGUMENT[4]

I. As This Court Consistently Has Recognized, § 301(a) Grants the Federal Courts Jurisdiction Over All "Suits For Violation Of Contracts Between An Employer And A Labor Organization."

Section 301(a) of the LMRA provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Continued from previous page

cause of action, a non-signatory would retain the right to interpose an appropriate defense. For example, a defendant could contend that no agreement was formed, that the agreement was repudiated, that no actual violation of an agreement occurred, that the defendant did not act directly or with specific intent to cause a violation of the agreement, or that the defendant's conduct was not improper under the circumstances.

[4] AGC agrees with and relies upon the Statement of the Case and Procedural History set forth in the Brief of the Petitioner.

29 U.S.C. § 185(a).

By its terms, § 301(a) grants the federal courts subject matter jurisdiction over all "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce." *Id.* Consistent with the statute, this Court's precedents make it clear that § 301(a) also requires the federal courts to develop and enforce a body of federal common law consistent with the policies that led Congress to enact that provision.

In *Textile Workers Union of America v. Lincoln Mills*, 353 U.S. 448 (1957), the Court found that § 301(a) directs the federal courts to "fashion" a body of federal common law to address and remedy disputes arising out of labor contracts. *Id.* at 456-57; *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985) (citing *Lincoln Mills*). As the Court explained in *Lincoln Mills*, this mandate flows directly from the broad terms of Section 301 and the LMRA. "It is not uncommon for federal courts to fashion federal law where federal rights are concerned." 353 U.S. at 456-57. "The range of judicial inventiveness will be determined by the nature of the problem." *Id.*

While *Lincoln Mills* makes clear that federal courts are to develop and apply federal substantive law and remedies under § 301(a), *Lincoln Mills* also recognizes that federal courts may consider and draw upon legal concepts, rights, defenses, and remedies commonly recognized in state law, to the extent that those

state law concepts are "compatible with the purpose" of § 301(a) and "effectuate" federal labor policies. *Id.* at 457.

Building on *Lincoln Mills*, in *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962), this Court held that a labor agreement between an employer and a union *must* be construed and enforced according to principles of federal common law developed under § 301(a), not state rules of decision. Accordingly, the Court concluded § 301(a) preempts any state law that would purport to govern the construction or enforcement of agreements between an employer and a labor union. *Id.* at 103-04.

That same year, in *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 247 (1962), the Court reviewed an action that an employer had brought against members of a union with which the employer had a collective bargaining agreement, asserting a state law claim of tortious interference with that employer's contractual relationship with the union. The Court held that the state law tortious interference claim was preempted by § 301(a) and had to be dismissed. *Id.* Without dwelling on whether individual defendants were signatories to the labor agreement at issue, *Atkinson* held that the plaintiff's claim of tortious interference against them was one governed "by the national labor relations law which Congress commanded this Court to fashion under § 301(a)." 370 U.S. at 247.

Six months later, in *Smith v. Evening News Ass'n*, 371 U.S. 195, 200-01 (1962), the Court

held that an individual union member could bring an action against his employer under § 301(a) for breach of a collective bargaining agreement, even though the individual was not a signatory to the agreement at issue. In reaching this conclusion, the Court rejected a narrow construction of § 301(a) that would have limited the federal jurisdiction and federal common law remedies to suits "between" the employer and the labor union that had signed the agreement at issue. *Id.* The Court reasoned that the term "between" in § 301(a) refers only to "contracts," not "suits." According to the Court, neither the "language" nor the "structure," nor the "legislative" history of § 301(a) supported a restrictive reading of the statute based on a litigant's status as a signatory to the agreement at issue. *Id.* Indeed, such a restrictive reading would "frustrate rather than serve the congressional policy expressed in that section." *Id.*

In *Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists*, 390 U.S. 557, 560 (1968), the Court took the next in its series of logical steps, holding that § 301(a) provides the *exclusive* remedy for any claim based on an alleged violation of a collective bargaining agreement, and more precisely, that a state law action could be removed to federal court based on the doctrine of "complete preemption" if the state law action sought relief for an alleged violation of a collective bargaining agreement. *See also Beneficial Nat. Bank v. Anderson*, 539 U.S. 1, 6-7 (2003) (discussing *Avco* and other cases where federal statutes provide exclusive

federal remedies that completely preempt state law causes of action).

Together, these seminal decisions establish that § 301(a): (1) must be construed broadly to effectuate congressionally mandated policies in the field of labor relations; (2) provides federal courts with unique authority and responsibility to develop a federal common law concerning violations of labor agreements; (3) preempts state law and causes of action that would otherwise govern the construction or enforcement of such agreements, including any state law or cause of action for tortious interference with a labor agreement; and (4) provides both a federal forum and remedies for suits alleging violations of labor agreements, without regard to whether the litigants are signatories, and without regard to whether the claim sounds in "contract" or "tort." *Atkinson*, 370 U.S. at 247 (§ 301(a) encompasses actions that sound in "tort" under state or common law); *Smith*, 371 U.S. at 200-01 (§ 301(a) governs actions between non-signatories and signatories without regard to whether the action would sound in contract under state or common law).

II. Federal Courts Have And Should Exercise Their Jurisdiction To Decide A Case That A Signatory To A Labor Agreement Brings Against A Non-Signatory For Directly, Intentionally, And Improperly Causing A Violation Of That Agreement.

In keeping with the plain meaning of § 301(a), this Court's prior precedents, and the well-settled policies that have long animated that key provision of the Labor Management Relations Act, the Court should hold that a signatory to a labor agreement may bring a claim under § 301(a) against a non-signatory for directly, intentionally, and improperly causing a violation of that agreement, whether or not the defendant assumed any formal rights or obligations under the agreement.

A. In *Wilkes-Barre*, The Third Circuit Correctly Held That A Signatory Could Bring An Action Under § 301(a) Against A Non-Signatory For Directly, Intentionally, And Improperly Causing A Violation Of A Labor Agreement.

Almost thirty years ago, in *Wilkes-Barre Pub. Co. v. Newspaper Guild of Wilkes-Barre, Local 120*, 647 F.2d 372, 377, 379-81 (3d Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982), the Third Circuit recognized that the negotiation and implementation of a collective bargaining

agreement often involves many more than the two parties to that agreement, including parties (like the international union in this case) who are not signatories to the agreement, and do not hold specific rights or obligations under the agreement, but who nevertheless have an unusually close relationship to one of the parties, significant and unique interests of their own, and little, if any, reluctance to take any action they deem necessary to advance their interests. Consistent with *Lincoln Mills*, 369 U.S. at 103-04 the Third Circuit recognized that this "problem" in the making and enforcement of collective bargaining agreements could be "solved" by allowing an action under § 301(a) against a non-signatory who allegedly caused a violation of the agreement intentionally and improperly.

The facts of *Wilkes-Barre* merit careful review because they are substantially similar to the circumstances of this case. In *Wilkes-Barre*, a newspaper publisher brought an action against a local union, an international union, individual union members, and a competitor that the unions and their members had created. The publisher asserted: (1) a claim against the local union for breach of its collective bargaining agreement with the publisher; and (2) a claim against the international union and the remaining defendants for causing the local union to violate the agreement.

In relevant part, the Third Circuit held that the publisher had stated a valid claim under § 301(a) against the international union and the competitor for violations of the labor agreement,

though neither one had signed the agreement. *Id.*[5]

The Third Circuit began its analysis of the issue by referring, first, to the text of § 301(a), and second, to this Court's decision in *Atkinson v. Sinclair Refining Co.* *Id.* The Third Circuit noted that § 301(a) completely preempts a state law claim for tortious interference and that any such claim is completely governed "by the national labor relations law which Congress commanded this Court to fashion under § 301(a)." *Id.* at 377 (quoting *Atkinson*, 370 U.S. at 247).

With "those general principles in mind," the court then examined two of its prior decisions and this Court's decision in *Smith v. Evening News Ass'n*, 371 U.S. at 200-01. *See* 647 F.2d at 377-81.[6] Consistent with the manner in which *Atkinson*, *Smith*, and numerous other cases had read § 301(a), the Third Circuit then held that § 301(a) provides federal subject matter

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[5] The court affirmed the district court order dismissing the publisher's claims against individual union members, holding that these individual defendants were entitled to statutory immunity from suit under the LMRA. *Id.*

[6] In *Wilkes-Barre*, the newspaper publisher argued that whether it was entitled to a federal remedy under the circumstances had been decided affirmatively in *Nedd v. UMW*, 556 F.2d 190, 196 (3d Cir. 1977), and the defendants argued the issue was answered negatively in *Teamsters Local Union No. 30 v. Helms Express, Inc.*, 591 F.2d 211 (3d Cir. 1979). However, the Third Circuit found neither case dispositive. 647 F.2d at 379.

jurisdiction over *any* suit that seeks remedies for a violation of an agreement between an employer and a labor union. *Wilkes-Barre*, 647 F.2d at 377-81.

As the court explained in its opinion, *nothing* in either the text of the statute or this Court's jurisprudence suggests that § 301(a) jurisdiction should be limited to those suits that "sound" in "contract" and are brought against a signatory or another formal party to a labor agreement. *Id.* As *Wilkes-Barre* succinctly stated, jurisdiction under § 301(a) does not turn on the status of litigants as signatories to an agreement or on the "label" attached to a cause of action. Rather, the "issue" is "whether the remedy sought may require that the court … interpret a collective bargaining agreement." *Id.* "All suits for violation of collective bargaining agreements are governed by federal law, because Congress intended that the scope of obligation in labor contracts in or affecting interstate commerce be uniform." *Id.* (citing *Lucas Flour*). "It is the need for national uniformity in determining the scope of obligation … that determines whether a federal standard is applicable, and which determines, incidentally [whether there is] federal subject matter jurisdiction." *Id.*

Because a "violation" of the newspaper publisher's collective bargaining agreement would be an "essential element" of any action against the international union and other non-signatories, the Third Circuit reasoned that the claim could not arise under state law and had to arise under the federal common law that § 301(a) authorizes and requires federal courts

to develop. "A holding that tortious interference with a collective bargaining agreement is not a matter governed by federal law would leave open the possibility of lack of uniformity in the scope of obligation which the Court in *Lucas Flour* sought to prevent." *Id.*

According to the Third Circuit, it was especially appropriate to hear claims for tortious interference with a collective bargaining agreement in federal court under § 301(a) because such claims involve the "protection of a property interest [in] a labor contract which has its being in and draws its vitality from the federal common law of labor contracts." *Id.* at 381.[7]

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[7] In *Local 472 of United Ass'n of Journeymen and Apprentices of Plumbing and Pipefitting Industry of U.S. and Canada v. Georgia Power Co.*, 684 F.2d 721, 725 & n.1 (11th Cir. 1982), the Eleventh Circuit likewise concluded that § 301(a) authorizes courts to hear a claim for violation of a labor agreement brought against a defendant who did not sign the agreement at issue but who allegedly caused its breach. However, the Eleventh Circuit appears to have abrogated *Georgia Power* without explanation in *Xaros v. U.S. Fid. and Guar. Co.*, 820 F.2d 1176, 1181 (11th Cir. 1987), where the court held § 301(a) jurisdiction did not extend to claims against non-signatories to an agreement who allegedly caused a breach.

B. *Wilkes-Barre* Fully Comports With The Drafting History Of § 301(a).

Wilkes-Barre was in keeping with the legislative history of § 301. As originally passed by the House, H.R. 3020 provided (in Section 302) for the following:

> Equal Responsibility and Liability
>
> Sec. 302. (a) Any action for or proceeding involving a violation of an agreement between an employer and a labor organization or other representative of employees may be brought *by either party* in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, if such agreement affects commerce, or the court otherwise has jurisdiction of the cause.

H.R. 3020, 80th Cong., at 64 (1947) (emphasis added), *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, at 31, 94; 158, 221 (1948).

A similar provision was included in the bill that the Senate passed (S. 1126). The Senate provision on contract enforcement provided as follows:

> Suits By And Against Labor Organizations
>
> Sec. 301. (a) Suits for violation of contracts concluded as the result of collective bargaining between an

> employer and a labor organization representing employees in an industry affecting commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

S. 1126, 80th Cong., at 53 (1947), *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, at 99, 151; 226, 279 (1948).

When the final bill emerged from the Conference Committee, the relevant language approximated the language included in the Senate bill. Significantly, the Conference Committee removed the reference to suits "being brought by either party," removing doubt that Congress did not intend suits brought under § 301 to be limited to suits between signatories. Together, the text and drafting history of the statute defeat any argument that its drafters intended to confine suits to signatories.

C. *Wilkes-Barre* Fully Comports With This Court's Recent Rulings, Which Recognize That The Scope Of § 301(a) Depends On The Substance Of The Claim Being Asserted, And Not Whether The Defendant Personally Signed The Agreement At Issue Or The Claim Sounds In "Contract."

To be sure, this is a case of first impression in this Court. Deciding this case in favor of the Petitioner should not, however, trouble this Court, as it would be entirely consistent with the Court's prior rulings on § 301(a). Indeed, Judge Gibbons' decision in *Wilkes-Barre* is faithful to the text and purpose of § 301(a) as both Congress and this Court have articulated them. The Third Circuit's reasoning in *Wilkes-Barre* was sound when written (nearly thirty years ago), and it remains sound today.

The terms of § 301(a) have not changed since *Wilkes-Barre* was decided and those terms still give the federal courts the power—and obligation—to decide all "[s]uits" brought "for" a "violation" of a collective bargaining agreement between an employer and a labor organization representing employees in an industry affecting commerce. What the Third Circuit recognized in *Wilkes-Barre* about § 301(a) is undoubtedly still true today: *nothing* in the text of the statute suggests that § 301(a) jurisdiction should be limited to those "suits" that "sound" in "contract"

or are brought against a signatory or other formal party to a labor agreement.

In the years since *Wilkes-Barre*, this Court has rendered a number of decisions on § 301(a), but none casts even the slightest doubt on (1) the Third Circuit's assessment of the "problem" that can arise when a non-signatory has an interest in an agreement and the power to cause a violation of that agreement; or (2) the remedy that the Third Circuit fashioned pursuant to § 301(a) and this Court's mandate in *Lincoln Mills* to deter and redress that problem.

To the contrary, the jurisprudence of this Court since *Wilkes-Barre* strongly supports a construction of § 301(a) that would allow a signatory to a labor agreement to bring an action against a non-signatory whose *intentional* and *improper* conduct has caused a violation of that agreement, without regard to any formal rights or obligations that the non-signatory may or may not have under the agreement.

Repeatedly, this Court has recognized that neither the scope of § 301(a) nor the merit of providing a federal remedy under the statute depends on (1) whether a claim sounds in contract, (2) whether a plaintiff or defendant is signatory to the collective bargaining agreement at issue, or (3) whether a party assumed any formal rights or obligations under the agreement. Rather the Court repeatedly has ruled that the scope of § 301(a) and the merit of providing a federal remedy depend upon the nature and substance of the claim being asserted and the relief being requested.

The Court's decision in *Wooddell v. International Brotherhood of Electrical Workers, Local 71*, 502 U.S. 93, 99-103 (1991), is a perfect example of the Court's modern construction of federal remedies under § 301(a). In *Wooddell*, a local union member brought suit under § 301(a) against both his local union and its officers, alleging violations of the union's constitution and by-laws (which were labor contracts covered by §301(a), and the Court's decision in *Plumbers and Pipefitters v. Plumbers and Pipefitters, Local 334*, 452 U.S. 615, 624 (1981)).

Neither the named plaintiff nor the union officials named as defendants had personally signed any of the labor agreements at issue. Given these facts, the defendants argued in this Court that § 301(a) jurisdiction only extended to suits between the parties to a labor agreement and did not extend to suits involving third-parties. The Court emphatically rejected that argument, noting that *Smith v. Evening News* "is to the contrary." 502 U.S. at 100-01. Following *Smith*, *Wooddell* reasoned that the individual plaintiff could bring suit under § 301(a), even though he was not a signatory to the agreement at issue, because the purpose of the plaintiff's suit was to redress a violation of rights derived from a labor agreement protected by national labor law against the parties allegedly culpable for the violation. *Id.*

Similarly, the Court's decision in *Allis-Chalmers Corp. v. Lueck,* 471 U.S. 202, 209-13, 220-21 (1985), demonstrates that the scope of § 301(a) does not depend on whether a claim sounds in "contract" or "tort" or whether the

claim is brought against a party who signed or assumed rights or obligations under the labor agreement at issue. In *Allis-Chalmers*, an employee brought a tort action under state law against his employer and an insurance company that administered an insurance plan that a collective bargaining agreement required. The employee alleged that the employer and the administrator had acted in bad faith when handling his insurance claim. *Id.* The defendants argued that the employee's action was preempted by § 301(a) because the payments for the insurance plan were the subject of a collective bargaining agreement between the employer and employee's union. The Wisconsin Supreme Court disagreed, and held that the employee could pursue his action for bad faith, notwithstanding § 301(a), because Wisconsin state law recognized an independent "tort" for bad faith that was "distinguishable" from any claim for breach of contract. *Id.* at 207-08. Moreover, the Wisconsin court ruled the employee could pursue this independent tort action against both his employer and the insurance company administrator (who was not a party to the underlying labor agreement).

This Court reversed the Wisconsin Supreme Court's ruling and held that the employee's tort claims against his employer and the third-party insurance company fell within the ambit of § 301(a). Although the employee's claims sounded in tort and were brought against both a signatory and a non-signatory to the underlying labor agreement, the Court had no difficulty concluding that the employee's state law claims

against both defendants must be treated either as § 301(a) claims or dismissed altogether as preempted by federal labor law under § 301(a). *Id.* at 220-21.

In the words of the Court, "[i]f the policies that animate § 301 are to be given their proper range, … the pre-emptive effect of § 301 must extend beyond suits alleging contract violations…. [Q]uestions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether the questions arise in the context of a suit for *breach of contract* or in a suit alleging *liability in tort*. Any other result would elevate form over substance and allow parties to evade the requirements of § 301…." *Id.* at 210-11 (emphasis added) (noting that the employee's claim had to be dismissed, even if treated as a claim under § 301(a), because the employee had failed to follow the requisite contractual grievance procedures).

"[W]hen resolution of a state-law [tort] claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim … or dismissed as pre-empted by federal labor-contract law." *Id.* at 220. "The requirements of § 301 as understood in *Lucas Flour* cannot vary with the name appended to a particular cause of action." *Id.* "Unless federal law governs that [tort] claim, the meaning of the health and disability-benefit provisions of the labor agreement would be

subject to varying interpretations, and the congressional goal of a unified federal body of labor-contract law would be subverted." *Id.*

The guiding principle for all of these cases—from *Lincoln Mills*, *Lucas Flour*, *Atkinson*, and *Smith* to *Allis-Chalmers* and *Wooddell*—is that § 301(a) extends to any action intended to rectify a violation of a labor contract allegedly caused by the improper conduct of the named defendant. Such actions must arise under federal law in order to ensure that rights and obligations under labor agreements are uniformly construed according to federal law and adequately protected and enforced in accordance with the federal policies that led Congress to enact § 301(a). *See Atkinson,* 370 U.S. at 247; *Smith*, 371 U.S. at 200-01; *Wooddell*, 502 U.S. at 99-103; *Allis-Chalmers*, 471 U.S. at 209-13.

This Court's decision in *Textron Lycoming Reciprocating Engine Div., Avco Corp. v. United Automobile, Aerospace, Agricultural Implement Workers of America, Intern'l Union*, 523 U.S. 653 (1998) underscores that point. In *Textron*, a union sued an employer under § 301(a) alleging that the employer had fraudulently induced the union to sign a collective bargaining agreement. The issue before the Court was whether the scope of § 301(a) "includes suits alleging that a contract is invalid." *Id.* at 656.

The Court ruled that § 301(a) did not extend to a "suit" alleging that a contract is "invalid." In its opinion, the Court noted that the plain language of § 301(a) provides courts with authority only over "[s]uits for violation of

contracts." Construing that statutory phrase in the "context" of the LMRA, the Court ruled that a suit "for violation of contract" is one filed "*because a contract has been violated*." *Id.* at 657 (emphasis in original). In "context," the Court wrote, "the word 'for' has an unmistakably backward-looking connotation, *i.e.*, '[i]ndicating the cause, motive, or occasion of an act, state, or condition; hence, because of; on account of; in consequence of; as the effect of; for the sake of….'" *Id.* (quoting Webster's New International Dictionary 984 (2d ed. 1950) (def. 7)). Thus, according to *Textron*, "'[s]uits for violation of contracts' under §301(a) are not suits that claim a contract is invalid, but suits that claim a contract has been violated." *Id. See* above pp. 4-7 and below pp. 36-39 (noting that a defendant to an action brought under § 301(a) may, however, interpose an appropriate defense to such an action).

D. Pursuant To § 301(a), Federal Courts Often Fashion Federal Common Law Remedies To Protect Contract Rights, Redress Violations Of Labor Agreements, And Effectuate Federal Labor Policies, Without Regard To Whether A Defendant Is A Signatory To The Agreement Or The Claim Sounds In "Contract."

In keeping with the plain meaning of § 301(a), this Court's precedents, and the well-settled policies embedded in the statute, federal

courts across the nation routinely fashion federal common law remedies that protect parties' rights, redress violations of labor contracts, and effectuate federal labor policies embedded in the statute, without regard to whether a defendant is a signatory to the agreement at issue, and without regard to the characterization of the claim as "contract" or "tort." Judicial recognition of Petitioner's action against the IBT is completely consistent with this common law approach to litigation under § 301(a).

For example, federal courts routinely hear cases under § 301(a) against defendants who did not sign the labor agreement at issue, based on the "single employer," "joint employer," and "alter ego" doctrines.

While these doctrines function differently,[8] the National Labor Relations Board (operating under a grant of regulatory authority in the National Labor Relations Act), and the federal courts (operating pursuant to Congress's directive to fashion a body of federal common law under § 301(a) of the construction and enforcement of labor agreements), have fashioned them for the singular purpose of ensuring that the NLRB and the courts are in a position to provide relief that appropriately and

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[8] Under the "single employer" doctrine, two companies may be bound by a union contract signed by one of them (and thus subject to suit under § 301(a)) if they are sufficiently integrated to be deemed a "single employer" and if the employees of each constitute a single bargaining unit. Under the "alter ego" doctrine, a non-signatory may be deemed an alter ego of a signatory if a court finds that an employer has attempted to evade its obligations by setting up a new company, engaging in a sham transaction, or making a technical change in operations. The "joint employer" doctrine recognizes that two or more separate employers can exert significant control over the same employees requiring joint compliance with applicable legal rights and obligations. *See, e.g., South Prairie Const. Co. v. Local No. 627, Int'l. Union of Operating Engineers, AFL-CIO*, 425 U.S. 800 (1976) (single employer doctrine); *NLRB v. Browning-Ferris Industries of Pennsylvania, Inc.*, 691 F.2d 1117, 1121 (3d Cir. 1982) (joint employer doctrine); *Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc.*, 690 F.2d 489, 504-05 (5th Cir. 1982)(single employer and alter ego doctrines).

meaningfully effectuates Congress's paramount goals of (1) ensuring that collective bargaining agreements are uniformly construed and enforced, (2) protecting the rights and expectations of parties to these agreements, and (3) deterring and redressing conduct that violates collective bargaining agreements. *See, e.g., Pratt-Farnsworth*, 690 F.2d at 504-05.

Federal courts also have allowed actions under § 301(a) against a non-signatory under § 301(a) under circumstances where the non-signatory is alleged to have breached a specific right or obligation voluntarily assumed by it under the agreement at issue. For example, in *Whelan v. Colgan*, 602 F.2d 1060, 1061-62 (2d Cir. 1979), the Second Circuit held that § 301(a) provided federal jurisdiction over a suit against individual trustees of a welfare fund created by a labor agreement. Section 301(a) provided federal jurisdiction and a federal common law remedy for the individual trustees' alleged misconduct, even though the individual trustees were *not* signatories to the agreement *but* because the individual trustees allegedly breached a duty created by the labor agreement. *Id.*

Similarly, in *Painting and Decorating Contractors Ass'n v. Painters and Decorators Joint Comm., Inc.*, 707 F.2d 1067, 1071 (9th Cir. 1983), the Ninth Circuit held that § 301(a) provided the federal district court with authority to decide a suit brought against a joint committee that a collective bargaining agreement had called for the parties to establish, notwithstanding that the joint committee was not a signatory to the agreement at issue. The

court reasoned that jurisdiction was proper under § 301(a) because the agreement provided for the creation of the joint committee, gave the committee certain rights and obligations, and would have to be construed to litigate the dispute by the plaintiff against the committee. *Id.*

In a similar fashion, courts have held that § 301(a) provides a federal remedy against non-signatories to enforce arbitration subpoenas. *See Teamsters Nat. Automotive Transporters Industry Negotiating Committee v. Troha*, 328 F.3d 325, 329 (7th Cir. 2003) (upholding an action under § 301(a) to enforce an arbitration subpoena); *American Federation of Television and Radio Artists, AFL-CIO v. WJBK-TV (New World Communications of Detroit, Inc.)*, 164 F.3d 1004, 1007-09 (6th Cir. 1999) (same).[9]

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[9] Those federal decisions that have held that § 301(a) does not provide a federal cause of action against a non-signatory who allegedly caused a violation of the terms of a labor agreement intentionally and improperly have done so based primarily on the view that a § 301(a) action is inherently narrow and depends on whether (1) the plaintiff's claim can be characterized as one that sounds in "contract" under state law and (2) the litigants are formal parties to the agreement at issue. *See Int'l Union, United Mine Workers of America v. Covenant Coal Corp.*, 977 F.2d 895, 897 (4th Cir. 1992); *United Food & Com. Workers Union, Local No. 1564 v. Quality Plus Stores, Inc.*, 961 F.2d 904, 906 (10th Cir. 1992); *Xaros v. U.S. Fid. and Guar. Co.*, 820 F.2d 1176, 1181 (11th Cir. 1987); *Serv., Hosp., Nursing Home & Public Employees Union,*

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In developing these federal remedies, the courts have not agonized over the nature of the claims being asserted or fretted about the *formal* status of parties vis-à-vis the contract. Rather, the courts have followed the flexible and realistic approach that *Lincoln Mills* and its progeny clearly contemplate crafting practical solutions to serious threats to contractually protected rights on a case-by-case basis. That is all that the Petitioner asks the Court to do based on the facts alleged here.

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Local No. 47 v. Commercial Prop. Servs., Inc., 755 F.2d 499, 506 (6th Cir. 1985)); *Loss v. Blankenship*, 673 F.2d 942, 948 (7th Cir. 1982); *Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc.*, 690 F.2d 489, 501 (5th Cir. 1982); *Bowers v. Ulpiano Casal, Inc.*, 393 F.2d 421, 423 (1st Cir. 1968). Such decisions however impose limitations on the scope of § 301(a) that do not comport with either the text of § 301(a) or this Court's prior precedents, and they undermine Congress's goal of ensuring that parties' right and obligations under labor agreements are uniformly construed and violations of such rights are deterred and redressed in a meaningful and realistic manner.

E. The Ninth Circuit's Ruling Does Not Comport With The Text Of § 301(a), This Court's Precedents, Or Other Judicial Decisions, And It Threatens To Create A Wholly Unnecessary And Ill-Advised "No-Man's Land" In National Labor Law.

Simply put, the issue in this case is whether, under *Lincoln Mills*, *Smith*, *Atkinson*, *Wooddell*, *Allis-Chalmers* and *Textron*, Petitioner's action against the IBT is an action "for" the violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce. Plainly it is.

Treating the allegations in Petitioner's complaint as true, the record reveals: (1) that the IBT had a close relationship with the local union and actively participated in the negotiation of the agreement at issue; (2) that, shortly after the ratification of that agreement, the IBT caused the local union and its members to violate a no-strike clause included in the agreement when its agent, Rome Aloise, personally directed members of the local union to strike;[10] (3) that the IBT took this action for the purpose of coercing Granite Rock to grant the IBT express rights of indemnification in a side agreement, if not an amendment to the

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[10] According to the Complaint, the resulting strike lasted more than two months and inflicted substantial financial damage on Granite Rock.

ratified agreement; and (4) that the IBT sought such rights for its own benefit, and not for the benefit of the local union that had ratified the agreement for the benefit of its members.[11]

These allegations state a claim "for" the violation of a collective bargaining agreement under *Lincoln Mills* and its progeny. Consistent with *Textron*, there can be no dispute that Petitioner filed this action against the IBT "*because a contract has been violated*." 523 U.S. at 657 (emphasis in original). Petitioner's action against the IBT hinges on its rights under the no-strike clause included in the underlying labor agreement and Petitioner's action against the IBT can be decided only via a judicial construction of that agreement under federal common law developed under § 301(a). Moreover, in keeping with *Textron*, Petitioner's action is "backward-looking" in that the action seeks to rectify a violation of a labor contract allegedly caused by the direct, intentional conduct of the IBT.

Nothing more is—or should be—required under the text of § 301(a) or this Court's

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[11] Regardless of whether or not the IBT went so far as to "displace" the local union or whether it would be appropriate to characterize its conduct with precisely that term, the alleged facts (which this Court must assume to be true) establish that the IBT inserted itself into the bargaining process and then directly and intentionally caused a violation of the resulting agreement in order to obtain contract rights and benefits for itself.

precedents to bring the action within the scope of § 301(a).

Because the action falls within the scope of §301(a), it is axiomatic that a federal district court has both the power to decide the merits of Petitioner's claim and, if the claim is proven at trial, to fashion a federal remedy that redresses the violation of Petitioner's rights in a way that effectuates the Congressional policies embedded in the LMRA.

Notwithstanding the Ninth Circuit's ruling to the contrary, denying the Petitioner a federal remedy under § 301(a) against the IBT does not withstand analysis. The Ninth Circuit's opinion holds that § 301(a) actions may be brought against only those defendants who are alleged to be signatories to a labor agreement or to have assumed express rights or obligations under such an agreement. But, for all the reasons described (above pp. 7-11, 19-25), this limitation on the scope of a § 301(a) action has no basis in the text of the statute, the statute's drafting history, or in this Court's jurisprudence. Indeed, a ruling denying Petitioner's action would require this Court to depart from long-standing precedents requiring that § 301(a) be construed broadly to effectuate Congress's policies and require the Court to impose new limitations on the scope of § 301(a) not found in the statute.

Such a dramatic departure from past precedent and narrowing of the scope of § 301(a) would only serve to create confusion and uncertainty concerning the scope of § 301(a) and

federal labor law, necessitating a reassessment of decades of cases decided by this Court.

Furthermore, a ruling from this Court denying Petitioner a right to bring an action against the IBT under the circumstances of this case would seem to leave Petitioner and similarly situated parties to labor agreements (like many of AGC's members) without a meaningful cause of action under either federal or state law to deter or remedy intentional, improper conduct by non-signatories who have the power to affect the performance of a collective bargaining agreement and who intentionally and improperly cause a violation of the agreement. This is something that the Court repeatedly has recognized should not occur under § 301(a).

Following this Court's decisions in *Lincoln Mills* and *Atkinson*, the courts of appeals repeatedly have held that § 301(a) preempts the vast majority of state law claims for tortious interference with a labor agreement.[12]

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12 *See, e.g.*, *Anderson v. Aset Corp.*, 416 F.3d 170 (2d Cir. 2005) (§ 301(a) preempted state law claim against non-signatory defendant for tortious interference); *Bartholomew v. AGL Resources, Inc.*, 361 F.3d 1333 (11th Cir. 2004); *Mattis v. Massman*, 355 F.3d 902 (6th Cir. 2004) (same); *Sprewell v. Golden State Warriors,* 266 F.3d 979 (9th Cir. 2001) (same), *amended on denial of rehearing*, 275 F.3d 1187 (9th Cir. 2001); *Steinbach v. Dillon Companies, Inc.*, 253 F.3d 538 (10th Cir. 2001) (same); *Oberkramer v. IBEW-NECA Service Center, Inc.*, 151 F.3d 752 (8th Cir. 1998) (same); *Wilkes-Barre*, 647

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However, the narrow construction of § 301(a) adopted by the Ninth Circuit in this case means that employers and unions also will be precluded from bringing an action under § 301(a) to deter and redress such misconduct by a non-signatory. The court of appeals' ruling, thus, creates a dangerous gap or "no-man's land" in federal labor law that can be expected to lead to increased labor unrest and interference by non-signatories in collective bargaining agreements.

Although the Ninth Circuit suggested that it was Congress's job to fill in this "gap," Congress did that more than sixty years ago when it enacted § 301(a) and gave the federal courts the power and obligation to decide suits for violations of labor agreements and fashion meaningful common law remedies for such violations. *Lincoln Mills*, 353 U.S. at 103-04. At no point has Congress suggested otherwise, and its silence supports the Court's role as the author and arbiter of federal common law under § 301(a). Since the Ninth Circuit denied Petitioner's action against the IBT, this Court must now fulfill that Congressional mandate, as it has in numerous cases brought in the past under § 301(a).

We have not come this far in our jurisprudence under § 301 to create a judicial no-man's land whereby an international union may

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F.2d at 377, 379-81 (recognizing the same as a basis for allowing an action under § 301(a)).

insert itself into the bargaining relationship of a local union, directly cause members of the local union to repudiate their agreement with an employer, and then walk away with impunity, unanswerable in the law for the damage it has caused. The need for responsibility in and enforceability of labor agreements was the cornerstone on which § 301 was based. Those values should not be rendered illusory just because the party causing the damage is not a signatory.

III. In Fashioning A Federal Remedy Under § 301(a), Federal Courts Should Consider The Nature Of The Problem That Arises When A Non-Signatory Like The International Union Causes A Violation Of A Contract, As Well As The National Labor Policies Embedded in § 301(a), And Other Well-Settled Principles Of Common Law.

In light of *Lincoln Mills* and the Court's role as the author and arbiter of federal common law under § 301(a), there is nothing "uncommon" or extraordinary about this Court recognizing an action under § 301(a) against a defendant who did not sign the agreement or assume any formal rights or obligations under it, but who nevertheless has caused a violation of the agreement intentionally and improperly. 353 U.S. at 103-04.

While the Court need not (and AGC respectfully submits should not) attempt to delineate the precise contours of such an action

in this case, the nature of the "problem" that arose in *Wilkes-Barre* and this case suggests that a signatory to a labor agreement should be able to state a claim under § 301(a) against a defendant who did not sign the agreement or assume any formal rights or obligations under it by alleging that (1) a contract existed between an employer and a labor organization in an industry affecting commerce; (2) the non-signatory defendant knew of the existence of the agreement; (3) the non-signatory defendant acted directly and intentionally to cause a violation of the agreement; (4) the non-signatory's conduct was improper and not excused by any legal right or privilege applicable under the circumstances; and (5) the signatory suffered damages.

Moreover, the Court's recognition of a limited cause of action under § 301(a) under the circumstances of this case would not mean that a defendant could not interpose an appropriate defense to such an action. For example, a defendant could contend that no agreement was formed, that no actual violation of an agreement occurred, that the defendant did not act directly or with specific intent to cause a violation of the agreement, or that the defendant's conduct was not improper under the circumstances.

And, consistent with *Lincoln Mills*, federal courts would apply federal substantive law to any such claims and defenses asserted under §301(a), drawing upon legal concepts, rights, defenses, and remedies commonly recognized in both state and federal law to the extent necessary to "effectuate" paramount federal

labor policies and delineate precisely what conduct would be deemed improper under the circumstance of a particular case. *Id.* at 457.[13]

Such an approach to adjudicating a claim against a non-signatory would effectuate Congress's paramount goals of ensuring that collective bargaining agreements are construed and enforced uniformly and deterring and redressing misconduct that violates the rights and expectations of parties under these same agreements. At the same time, such a standard would allow federal courts to place real and meaningful limits on the scope of an action under § 301(a) and ensure that § 301(a) actions are strictly limited to conduct that is inimical to the collective bargaining process and the industrial peace created by federally protected labor agreements.

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[13] For example, in determining whether a non-signatory's conduct is "improper," federal courts can consider: (a) the nature of the non-signatory's conduct; (b) the non-signatory's motive; (c) the interests of the parties to the agreement and the beneficiaries of the agreement; (d) the interests sought to be advanced by the non-signatory; (e) the social interests in protecting the freedom of action of the non-signatory and the contractual interests of the parties; (f) the proximity or remoteness of the non-signatory's conduct to the interference; and (g) the relations between the parties. *See* Restatement (Second) of Torts §§ 766, 767 (summarizing general legal elements of, and defenses to, intentional, improper interference with the performance of a contract).

CONCLUSION

Whatever the precise contours of § 301(a), a federal cause of action certainly should be available to a signatory under the circumstances of this case, where a non-signatory is alleged to have involved itself in every aspect of the collective bargaining process and then, when it was dissatisfied with the resulting agreement, directed union members to violate the agreement, not for their benefit, but to coerce the signatory into granting additional express rights that would benefit the non-signatory directly.

To "exclude" such a claim from the "ambit of §301(a)" would "stultify" national labor policy and leave rights and obligations under labor law vulnerable to intentional misconduct. *Smith*, 371 U.S. at 200-01.

Respectfully submitted,

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