No. 08-1214

IN THE

Supreme Court of the United States

GRANITE ROCK COMPANY,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, *et al.*,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Section 301(a) of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. §185(a) ("Section 301"), creates federal jurisdiction for "suits for violation of contracts" between unions and employers. Can a claim for tortious interference with such a contract be brought against a union or employer that is neither a party to the contract nor has any legal rights or obligations that arise from the contract?

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STATEMENT OF THE CASE

This case arises from a strike against Petitioner, Granite Rock Company ("Granite Rock"), by Teamsters Local 287 ("the Local" or "Local 287"). Granite Rock instituted legal proceedings against Local 287 alleging that the Local had entered into a collective bargaining agreement ("CBA") with Granite Rock on July 2, 2004, and that the Local's continuation of a strike beyond that date constituted a breach of the CBA's no-strike clause. Granite Rock alleged a breach of contract claim against Local 287 pursuant to Section 301, which provides that:

> Suits for *violation of contracts* between an employer and a labor organization . . . may be brought in any district court of the United States . . . .

Emphasis added.

Respondent, International Brotherhood of Teamsters ("International"), was not initially named as a defendant. The International is not a party to the CBA between Granite Rock and Local 287 that the Local allegedly breached, nor is it a party to any other CBA with Granite Rock. Just before the trial of Granite Rock's *breach of contract* claim against Local 287 was to commence, Granite Rock filed an amended complaint that attempted to plead a breach of contract claim against the International.[1] That claim was dismissed by the District Court, which granted Granite Rock's request that it be allowed to amend its breach of contract claim against the International to allege clearly its theory that the International was an "undisclosed principal" to the CBA.[2] Instead of amending the complaint in that manner, Granite Rock abandoned any breach of contract claim against the International and alleged for the first time that the International had *tortiously interfered* with the CBA by encouraging Local 287 to continue its strike beyond July 2, 2004. Pet. App. 110-26.

In response to the International's subsequent motion to dismiss, the District Court held that the claim against the International had to be dismissed because Granite Rock could not pursue a claim for tor-

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[1] Ninth Circuit Excerpts of Record at 112.

[2] Ninth Circuit Supplemental Excerpts of Record at 32-34.

tious interference pursuant to Section 301.[3] A three-judge panel of the Ninth Circuit (Circuit Judges Gould and Bea, and District Judge Sedwick) unanimously affirmed the dismissal, finding that the plain language and legislative history of Section 301 make clear that Congress intended to provide only a federal claim to enforce rights and duties created in agreements between unions and employers and not a tort claim for interference with advantageous economic relations. By so holding, the Ninth Circuit joined eight other circuits, and rejected a nearly thirty-year-old outlier decision by the Third Circuit. Granite Rock sought rehearing *en banc*. No judge of the Ninth Circuit requested a vote on the petition for rehearing.

REASONS FOR DENYING THE PETITION

In Section 301, Congress created a federal claim for breach of contract. Nine circuits have clearly held that Section 301 does not encompass tort claims for interference with contract. The only contrary ruling is a 1981 Third Circuit decision whose rationale has been rejected by every other circuit that has considered the issue. The Ninth Circuit's recent decision merely adds to the overwhelming weight of authority that has existed for many years. The consensus that Section 301 does not authorize tort claims is compelled by the plain language of that section and has not resulted in labor-management strife or left employers and unions without an adequate remedy when breach of a CBA occurs. Hence, the Petition

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[3] Because the International was dismissed pursuant to Fed. R. Civ. Proc., Rule 12(b)(6), none of the factual claims in Granite Rock's Petition to this Court regarding the International has been established.

should be denied as to the question it presents regarding Section 301.

1. Section 301 creates a federal claim for relief for "[s]uits for *violation of contracts* between an employer and a labor organization." (Emphasis added). This Court has found that Section 301 "authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements." *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 451 (1957). But the Court has cautioned that its construction of Section 301 does "not envision any freewheeling inquiry into what the federal courts might find to be the most desirable rule." *Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401, 406 (1981) (quotation marks and citation omitted). *See Textron Lycoming Reciprocating Engine Division, Avco Corp. v. United Automobile Workers*, 523 U.S. 653, 656-58 (1998) (scope of Section 301 constrained by the language of the statute).

The question presented by this case is whether the federal common law that courts are authorized to develop under Section 301 includes a claim for tortious interference with contract. The Ninth Circuit held that such a tort claim is not part of the federal common law of collective bargaining agreements under Section 301, explaining that the statute is not an invitation to create "an independent body of tort law." Pet. App. 11 (citing *Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176, 1180 (7th Cir. 1993) ("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.")).

In so holding, the Ninth Circuit joined eight other circuits that do not permit tortious interference

claims to be brought pursuant to Section 301. *See, e.g., 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 Homes & Public 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).[4]

Only the Third Circuit has reached a different conclusion. *Wilkes-Barre Publ'g Co. v. Newspaper Guild, Local 120*, 647 F.2d 372 (3d Cir. 1981). That decision failed to acknowledge or discuss prior circuit holdings to the contrary and was immediately criticized. *See Pratt-Farnsworth*, 690 F.2d at 501. Nearly thirty years later, no other circuit has adopted the Third Circuit's reasoning.

2. Petitioner attempts unpersuasively to inject uncertainty, where none exists, regarding the rulings by those nine circuits that do not permit tortious interference claims under Section 301. The alleged uncertainty is based on the fact that some of those courts

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[4] As the Ninth Circuit correctly recognized, the Eleventh Circuit initially appeared to agree with the Third Circuit but subsequently clarified its position in *Xaros*. Pet. App. 10, n.2.

have simply stated, in a short-hand manner, that a Section 301 claim cannot be brought against a party that is not signatory to the CBA; other circuits have explained, more fully and properly, that "[A] district court does not have subject matter jurisdiction over a non-signatory to a collective bargaining agreement, *where no rights or duties of the non-signatory party are stated in the terms and conditions of the contract.*" *Commercial Prop. Servs., Inc.*, 755 F.2d at 506 (emphasis added); *accord, Greenblatt*, 68 F.3d at 572.

This difference in articulating why Section 301 does not encompass a claim for tortious interference does not constitute the type of split among the circuits that warrants review of the decision below, since it has long been clear that a Section 301 breach of contract claim *can* properly be brought by or against non-signatories to a CBA, but only if they have rights or obligations that arise from the contract itself.[5] As the Ninth Circuit noted, "some variations in phrasing" do not affect the conclusion that "the circuits are almost unanimous in rejecting LMRA jurisdiction over a claim such as Granite Rock's claim against [the International]." Pet. App. at 9. The Ninth Circuit's opinion merely contributes to the overwhelming uniformity of law on the issue presented by the Petition.

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[5] *See, e.g., Smith v. Evening News Ass'n*, 371 U.S. 195, 200 (1962) (union members can enforce their rights under CBA); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1975) (same); *Wooddell v. Int'l Bhd. of Elec. Workers, Local 71*, 502 U.S. 93, 100-01 (1991) (member can bring suit under Section 301 to enforce rights created in union constitution); *Painting & Decorating Contractors Assoc. of Sacramento v. Painters & Decorators Jt. Council of the East Bay Counties*, 707 F.2d 1067 (9th Cir. 1983) (joint labor-management committee created by CBA to administer its terms is proper defendant in Section 301 suit).

3. The nearly unanimous interpretation of Section 301 followed by the Ninth Circuit is correct. Before Section 301 was enacted, employers often faced difficulty suing signatory unions for breach of contract because, as unincorporated associations, labor organizations were not proper defendants in many states' courts. Thus, the Congressional concern motivating Section 301 was to create "a procedure for making such agreements enforceable in the courts." *Lincoln Mills*, 353 U.S. at 453. Section 301 ensures that unions, as well as employers, can be sued for breach of contract, thereby "'establish[ing] 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)). By making labor contracts enforceable in federal court, Section 301 "promote[s] industrial peace through faithful performance by the parties [of their] collective agreements." *See* S. Rep. No. 80-105, at 16 (1947), *reprinted in* 1 NLRB, Legislative History of the Labor-Management Relations Act, 1947, at 422 (1985).

Interference with contract is not part of the law of contracts but rather is one of several torts relating to interference with advantageous economic relations.[6]

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[6] Restatement (Second) of Torts, Div. Nine, p. 1 (1977); *see 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 courts"); *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

In the realm of labor-management relations, Congress dealt with such interference explicitly in the LMRA. In 1947, Congress amended the National Labor Relations Act, 29 U.S.C. §§151 *et seq.*, to include not only Section 301 for breach of contract claims but also certain labor-related tort-like claims for interference with business relations. *See* 29 U.S.C. §158(b)(4)(B) ("Section 8(b)(4)(B)") (creating unfair labor practice if union strikes, threatens or coerces a third party to force it to cease doing business with an employer); 29 U.S.C. §187 ("Section 303") (creating federal court claim for an employer injured by such an unfair labor practice).[7] This Congressional regulation of labor-related torts is reflected in the subsequent deletion of Chapter 38, "Labor Disputes," from the Division of the Restatement of Torts dealing with "Interference with Advantageous Economic Relations":

> 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. Nine Introductory Note (1977).

There is simply no indication that Congress intended Section 301, which deals with "violation of

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of relationships, some economic and some personal." (citations omitted)).

[7] Granite Rock correctly recognized that the activity alleged against the International was not encompassed by Sections 8(b)(4)(B) and 303 and, therefore, it neither filed an unfair labor practice charge against the International with the National Labor Relations Board, nor alleged a Section 303 claim against the International in the District Court.

contracts," to authorize the federal courts to develop a common law of torts to supplement the explicit and limited tort-like claims for relief created by other sections of the same statute that enacted Section 301; and it is irrelevant that the tort-like claims authorized by Congress do not include the tort claim that Granite Rock would like to bring against the International. *See NLRB v. Drivers Local Union No. 639*, 362 U.S. 274, 289-290 (1960) (quoting *Local 1976, United Bhd. of Carpenters v. NLRB*, 357 U.S. 93, 99-100 (1958) (LMRA was "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 that fact "counsels wariness" in interpreting the LMRA to achieve a certain result "when, from the words of the statute itself, it is clear that those interested in just such a [result] were unable to secure its embodiment in enacted law.")); *Lodge 76, Int'l Ass'n of Machinists v. Wisc. Employment Relations Comm'n*, 427 U.S. 132, 155 (1976) ("congressional intent in enacting the comprehensive federal law of labor relations" results in certain areas being "free of regulation").

4. Finally, Granite Rock attempts to persuade the Court that not permitting tortious interference claims to be brought under Section 301 provides unions with a "blueprint for industrial chaos." Pet. at 35.[8] The majority rule that the Ninth Circuit adopted, however,

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[8] This claim is ironic since in most of the circuit court cases cited *supra* it was the employer that argued that Section 301 does *not* create a claim for tortious interference. *See, e.g., Covenant Coal Corp.*, 977 F.2d 895; *Pratt-Farnsworth*, 690 F.2d 489; *Commercial Prop. Servs.*, 755 F.2d 499; *Loss*, 673 F.2d 942; *Quality Plus Stores, Inc.*, 961 F.2d 904.

has been followed for well over 40 years with no indication that it has produced such chaos.[9]

Granite Rock's related intimation, that the Ninth Circuit's decision leaves it remediless, is also plainly false. Pet. at 32-33. It has precisely the remedy that Congress intended when it passed Section 301: a breach of contract claim against the labor organization that allegedly committed a "violation of contract[ ]," *viz.*, Local 287. In fact, Petitioner has vigorously pursued that remedy in this case and also filed an unfair labor practice charge against Local 287 with the National Labor Relations Board. *See Granite Rock Co. v. Int'l Bhd. of Teamsters Local 287*, 546 F.3d 1169 (9th Cir. 2008); *Teamsters Union Local 287 v. NLRB*, 293 Fed.Appx. 518 (9th Cir. 2008); *Teamsters Local 287*, 347 NLRB No. 32 (2006).

Thus, Granite Rock has remedies; just not the remedy it believes Congress should have provided. But as the Ninth Circuit correctly recognized, "[i]f Con-

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[9] On the other hand, if Granite Rock's proposed reading of Section 301 were accepted, every plaintiff in a breach of contract action—be it a union or an employer—would have a strong incentive to bring a tort claim against some "deep pocket" parent entity by alleging, as Granite Rock did here, that the parent somehow induced the party to the CBA to breach its terms. Under current law, a parent company that instructs a wholly-owned subsidiary to breach its CBA can only be liable for the resulting breach if the subsidiary is an alter ego of the parent. *Cf. Sheet Metal Workers Int'l Ass'n, Local No. 359 v. Ariz. Mech. & Stainless, Inc.*, 863 F.2d 647, 651 (9th Cir. 1988). Under the interpretation of Section 301 put forth by Granite Rock, however, a union could bring a tort claim against the deep-pocket parent without having to establish an alter ego relationship. *Cf. Int'l Union, United Auto. Workers v. N. Telecom, Inc.*, 434 F.Supp. 331 (E.D. Mich. 1977) (tortious interference claim against parent company not cognizable under Section 301).

gress did not provide a remedy for Granite Rock directly against [the International]," in addition to its remedies against Local 287, "then that is an issue to be addressed by Congress, not by an extraordinary and outlier interpretation of the governing statute." Pet. App. 12-13.[10]

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[10] Granite Rock also suggests that certiorari should be granted because of an alleged "Circuit division" regarding whether Section 301 preempts a state claim for tortious interference with a CBA. Pet. at 32-34. The preemptive effect of Section 301 was not before the Ninth Circuit and is not addressed in its decision, since Granite Rock never sought to bring a state law tortious interference claim against the International.

Amici National Association of Manufacturers (Br. at 9) and Associated General Contractors (Br. at 8-11) also cite Section 301 preemption cases and suggest that because state law claims requiring the interpretation of the terms of a CBA are preempted by Section 301 due to Congress' desire that there be uniformity in the interpretation of CBAs, a tortious interference claim must necessarily "arise under" Section 301 because an element of such a claim (*i.e.*, breach of contract) requires an interpretation of the terms of a CBA. That argument, however, confuses two very different issues. The first, involved in this case, is whether Congress intended Section 301 to create a federal claim only for breach of contract. The second issue, not involved in this case, is whether, if Congress created only a breach of contract claim in Section 301, it intended to occupy the field and preempt any state claim, such as tortious interference, that arises in the context of an alleged breach of a CBA.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's request that certiorari be granted to review that portion of the Ninth Circuit's decision holding that Granite Rock could not bring a claim for tortious interference against the International pursuant to Section 301.

Respectfully submitted,

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