

ENFORCING ARBITRAL SUBPOENAS: RECONSIDERING FEDERAL QUESTION JURISDICTION UNDER FAA SECTION 7

This article examines three issues pertinent to the enforcement of arbitral subpoenas under FAA § 7:

- (1) Does the nature and unique language of § 7 vest federal courts with federal question jurisdiction?**
- (2) Can a § 7 action commenced in state court be removed to federal court?**
- (3) Can a state court dismiss a § 7 action on the ground that federal courts have exclusive jurisdiction?**

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The weight of federal judicial authority favors the view that the plain language of Section 7 of the Federal Arbitration Act (FAA) does not authorize arbitrators to issue third-party subpoenas for pre-hearing discovery. The rules of many alternative dispute resolution services, however, do not expressly prohibit such subpoenas. Thus, arbitrators regularly issue them, notwithstanding recent federal court decisions refusing to enforce them. Instead, parties are optimistically initiating enforcement proceedings in state courts, hoping to avoid this federal court precedent. But can these actions be removed to federal court on

the ground that Section 7 confers original jurisdiction under the federal question statute, codified at Section 1331 of Title 28 of the United States Code? Courts have generally held that other provisions of the FAA do not create a basis for so-called “federal question” jurisdiction under Section 1331.

Although some courts have applied this principle to Section 7, none have carefully considered whether the nature and unique language of Section 7 vest federal courts with this jurisdiction. This article addresses that topic as well as whether these actions can be removed to federal court under Section 1441 of Title 28, based on the text of Section 7 or the “substantial federal question doctrine.” It also considers whether

held that the “straightforward and unambiguous” text of Section 7 does not authorize arbitrators to issue these subpoenas.⁵

Original Jurisdiction of Federal Courts

A federal court’s original jurisdiction is determined by Section 1331, which provides that the district courts “have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”⁶ A civil action “arises under” the federal law that creates the cause of action so federal question jurisdiction will generally exist if a federal statute creates a plaintiff’s right to relief.⁷ Thus, for example, a civil action under Section 1983⁸ alleging a deprivation of rights by a person acting under color of

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state actions may be dismissed because federal courts have exclusive jurisdiction to consider such actions.

FAA Enforcement of Arbitral Subpoenas

An arbitrator’s authority to issue a third-party subpoena does not include the authority to enforce that subpoena against a third party. Only a court can compel a third party to comply with an arbitral subpoena. That authority resides in Section 7 of the FAA¹ (or a comparable state statute).² Section 7 reads in pertinent part:

The arbitrators ... may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case.... [I]f any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators....³

The federal circuits are split as to whether Section 7 authorizes arbitrators to issue subpoenas to third parties to the arbitration for pre-hearing discovery purposes.⁴ That being said, recent federal court decisions have consistently

law invokes a federal court’s original jurisdiction.⁹

Case law has also established that, in limited circumstances, original jurisdiction can arise from a “well pleaded complaint” seeking relief that “necessarily depends on resolution of a substantial question of federal law.”¹⁰ This is sometimes referred to as the substantial-federal-question doctrine. As an example, in *Ayres v. General Motors Corp.*,¹¹ the 11th Circuit found that the district court had original jurisdiction to decide an action brought solely under Georgia’s civil RICO statute,¹² because that statute “depends upon proving, as necessary predicate acts, a violation of the federal mail and wire fraud statutes.” Hence, the resolution of that matter “depend[ed] entirely on interpretation of th[ose] federal” statutes.

The FAA and Original Jurisdiction

Section 7 states, in relevant part, that “upon petition the United States district court ... may compel the attendance” of “any person ... summoned to testify” who refuses to voluntarily comply with an arbitral subpoena. This language seems to give federal courts original jurisdiction to hear Section 7 petitions. However, the general rule is that the FAA itself does not confer original jurisdiction on a district court and that another basis for federal court jurisdiction must exist, i.e., diversity of citizenship or a claim based on another

er federal statute. This rule has developed mainly from *dicta* in *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, a 1983 Supreme Court decision delivered by Justice William Brennan.¹³

Footnote 32 of that decision states that the FAA “creates a body of federal substantive law¹⁴ establishing and regulating the duty to honor an agreement to arbitrate, yet it does not create any independent federal question jurisdiction under 28 U.S.C. § 1331 or otherwise.”¹⁵ Justice Brennan seemed to base this conclusion on the language of Section 4, which, he noted, “provides for an order compelling arbitration only when the federal district court would have jurisdiction over a suit on the underlying dispute; hence, there must be diversity of citizenship or some other independent basis for federal jurisdiction before the order can issue.”

Justice Warren E. Burger repeated Brennan’s conclusion in footnote 9 of *Southland Corp. v. Keating*.¹⁶ Burger wrote that the conclusion that the FAA does not create independent federal question jurisdiction under Section 1331 “seems implicit in the provisions in [Section] 3 for a stay by a ‘court in which such suit is pending’ and in [Section] 4 that enforcement may be ordered by ‘any United States district court which ... would have jurisdiction under [T]itle 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties.’”

Thus, the language of Sections 3 and 4, unlike other sections of the FAA, literally necessitates that federal courts have an independent jurisdictional basis to entertain cases arising under those sections. This point is critical since Section 7 contains no such language, and neither Justice Brennan nor Justice Burger considered the language of Section 7.

Federal courts have consistently applied the *Moses H. Cone/Southland dicta* to other FAA provisions (including Section 7) that do not expressly require an independent basis for jurisdiction, even though they plainly read as if they confer federal question jurisdiction on the district court. An example is the 7th Circuit decision in *Amgen, Inc. v. Kidney Center of Delaware County, Ltd.*¹⁷ The appeals court simply concluded that the “interpretation of the FAA” set forth in *Moses H. Cone* “establishes that the statute itself does not create subject matter jurisdiction for independent proceedings, whether they involve [Section] 4 or [Section] 7.” The 2nd Circuit reached the same conclusion in *Stolt-Nielsen SA v. Celanese AG*, even while acknowledging that the language of “Section 7 does explicitly permit an aggrieved party to bring a petition before a district court to enforce an arbitration subpoena.”¹⁸ It nevertheless con-

cluded that “there is no reason to find that Section 7 does not require an independent basis for federal court jurisdiction when we have already found that other provisions of the FAA containing similar language do.”

Courts that have provided a reason for following the *dicta* in *Moses H. Cone* and *Southland* have mostly cited policy concerns as justification. For instance, several courts have said that finding federal question jurisdiction under some sections of the FAA and not others would be internally inconsistent, as well as inconsistent with the limited nature of federal jurisdiction.¹⁹ For example, it might lead to a “drastic change in the scope of federal court activity.”²⁰ In other words, it might lead to the filing of more cases.

Parties wishing to enforce arbitral subpoenas for pre-hearing discovery served on third parties now readily seek enforcement in state courts. Even when there is an independent basis for federal jurisdiction, it would be prudent to do so because federal courts tend to hold that these subpoenas are unenforceable under Section 7.²¹ In this situation, the party opposing enforcement would naturally like the state court to decline to enforce the subpoena. If that outcome is unlikely, could that party remove the case to federal court under Section 1441 where recent precedent is favorable on that point, or otherwise seek dismissal?

Grounds for Removal

Section 1441, the removal statute, permits a defendant to remove a state court action to federal court if the action would fall within the federal court’s original jurisdiction under Section 1331, either because federal law creates the cause of action²² or the plaintiff’s right to relief necessarily depends on the resolution of a substantial federal question, i.e., the substantial-federal-question doctrine.²³ Courts generally apply three principles in deciding whether there is a “substantial” federal question sufficient to confer original jurisdiction on the district court: “(1) the state law claim must necessarily raise a disputed federal issue; (2) the federal interest in the issue must be substantial; and (3) the exercise of jurisdiction must not disturb any congressionally approved balance of federal and state judicial responsibilities.”²⁴

Exclusive Jurisdiction of Federal Courts Under the FAA

In *Matter of Beck’s Superior Hybrids*, a recent case in Indiana, an arbitration panel sitting in New York granted a pre-hearing petition by Monsanto to subpoena Beck’s, an Indiana third party, to appear before a panel member in Indiana at a preliminary hearing, and bring with

him certain business records related to its arbitration claim.²⁵ Because the subpoena called for Beck's to appear before a member of the arbitration panel, it did not suffer from the same defects as most discovery subpoenas. Recognizing that Monsanto and its adversary were both Delaware companies and that there was, thus, no independent basis for federal jurisdiction, Monsanto filed a petition to enforce the subpoena in an Indiana trial court, pursuant to Indiana Trial Rule 28(E). This rule permits the courts to assist foreign tribunals and litigants in pursuing discovery in Indiana's jurisdiction. The trial court agreed with Monsanto and ordered Beck's to comply with the subpoena.

On appeal, a divided court reversed and remanded, holding that federal district courts have

exclusive authority to enforce arbitral subpoenas under Section 7. The court acknowledged that some courts have found that Section 7 requires an independent jurisdictional basis, but it held that under Section 7's "plain terms," Congress provided that the "United States district court for the district in which [the] arbitrators" are sitting is the exclusive forum to en-

force an arbitration subpoena to a third party.²⁶ Thus, the court found that Section 7 preempted Indiana Trial Rule 28(E). It also distinguished Section 7 from other provisions of the FAA (such as Section 4) that, under Supreme Court rulings, require the application of state substantive law and therefore provide state and federal courts with concurrent jurisdiction.

Applying These Principles to Section 7

Plain Language of Section 7

Courts considering whether Section 7 provides a basis for federal question jurisdiction have rarely, if ever, begun with the obvious question: Does Section 7 express an intent by Congress to grant federal courts original jurisdiction over actions to enforce third-party subpoenas issued by arbitrators?²⁷ As several courts have recognized, it arguably does.²⁸ Section 7's language seems unambiguous. It explicitly permits a party seeking to enforce such subpoenas to "petition the United States district court for the district in

which such arbitrators, or a majority of them, are sitting to "compel the attendance of such person or persons before said arbitrator or arbitrators."²⁹ Thus, in terms of Section 1331, the right to enforce an arbitral subpoena certainly appears to "aris[e] under" one of the "laws ... of the United States"—Section 7 and only Section 7. Put differently, Section 7 creates the party's right to relief, which is enforcement of the arbitration subpoena. The exercise of jurisdiction in these circumstances is generally valid absent statutory direction to the contrary.³⁰ Restrictive language in Sections 3 and 4 provide contrary direction, but there is no such language in Section 7. There is also no language in the FAA that precludes federal question jurisdiction under its provisions as a whole. Furthermore, the FAA's legislative history expressly states that the Act is intended to "provide[] a procedure in the Federal courts" for the enforcement of arbitration agreements.³¹

Administrative and Labor Arbitration Subpoenas

Finding that Section 7 grants federal courts with jurisdiction to enforce arbitral subpoenas would seem consistent with court decisions that have found that similar language in other statutes constitutes a specific grant of federal question jurisdiction.³² For example, the statute governing the judicial authority to enforce an administrative subpoena issued by the International Trade Commission under Section 333(b) of the Tariff Act, states:

[I]n case of disobedience to a subp[o]ena[,] the commission may invoke the aid of any district ... court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subp[o]ena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission....³³

True, these are for the purpose of federal agency investigations, but these agencies, like private litigants, only have original jurisdiction to bring actions in federal court when that jurisdiction is conferred by Congress.³⁴ In addition to such administrative subpoenas, federal courts have original jurisdiction to enforce third-party subpoenas issued by labor arbitrators in arbitrations brought under the Labor Management Relations Act.³⁵

Policy Concerns. The policy concerns that have made courts reluctant to deviate from the *dicta* in *Moses H. Cone* and *Southland* involving Sections 3

and 4 seem overstated and not supported by specific facts.

First, as noted above, federal district courts already have federal question jurisdiction to enforce administrative subpoenas issued by government agencies and subpoenas by labor arbitrators.³⁶

Second, finding that federal district courts have jurisdiction to enforce private arbitration subpoenas would likely not lead to a “drastic change” in federal court activity.³⁷ According to the Indiana appeals court in *Beck’s Superior Hybrids*, in the 63 years since Section 7 was enacted, “there has not been a single reported appellate case where a state court has been involved in an enforcement action under that law.” Thus, it could be that federal courts are already entertaining the majority, if not all, of these actions.

Furthermore, it is not unusual for Congress to confer jurisdiction on federal courts under certain provisions of a statute but not others. For example, in the Telephone Consumer Protection Act,³⁸ “Congress drew careful jurisdictional distinctions” between the various sections—mandating exclusive federal court jurisdiction over certain actions brought by states in one section, limiting private rights of action to state courts in another section and authorizing concurrent jurisdiction to federal and state courts in other sections.³⁹ Congress may have intended such a jurisdictional distinction between Section 7 and other sections of the FAA given the different language it used in drafting those provisions, the clear language of Section 7 and the logical rationale for encouraging matters under certain sections of the FAA, like Sections 3 and 4, to be heard in state courts. As the court explained in *Beck’s Superior Hybrids*, because Section 4 requires a court to interpret a contract to determine if arbitration is required, which is a substantive question of state law, “of course the states have jurisdiction over those issues” absent some underlying basis for federal question jurisdiction. Section 7, on the other hand, “requires no application of judicial power other than the mere enforcement of a subpoena” and “[i]n exercising that authority, there is no risk that the federal judiciary will misapply the law of the states.”

Substantial-Federal-Question Doctrine

The factors courts use to determine whether there is a “substantial” federal question⁴⁰ arguably favor bestowing original jurisdiction on a federal court when an action seeking to enforce an arbitration subpoena to a third-party for pre-hearing discovery is filed in state court and the adversary seeks to remove it to federal court.⁴¹

First, a party’s right to enforce such a subpoena under Section 7 (or a comparable state statute),⁴² “necessarily raise[s] a disputed federal issue” as to whether the text of the statute authorizes arbitrators to issue this discovery.⁴³

Second, federal interest in this issue appears to be “substantial” for the following reasons:⁴⁴

(a) The proper construction to be afforded Section 7’s text is clearly an “important” issue as it concerns the scope of third-party discovery in arbitration.⁴⁵

(b) This issue is not “anomalous or isolated” as evidenced by the multiple decisions addressing it.⁴⁶

(c) A decision concerning the construction of Section 7 would not be “merely incidental,” but dispositive of the outcome of an enforcement action.

Third, there is no evidence that the exercise of jurisdiction over these enforcement actions by the federal court would not disrupt the “congressionally approved balance of federal and state judicial responsibilities.” As the Indiana appeals court noted in *Beck’s Superior Hybrids*, there are no state court cases dealing with the enforcement of arbitral subpoenas.

An Indiana appeals court recently held that federal district courts have exclusive authority to enforce arbitral subpoenas under Section 7.

Exclusive Jurisdiction

Beck’s Superior Hybrids provides an argument for seeking dismissal of an action to enforce an arbitral subpoena filed in state court on the ground that federal courts have exclusive jurisdiction to consider these actions. An enlightened court may respond to the Indiana court’s reasoning.

Conclusion

Convincing a federal or state court to consider whether the nature and unique language of Section 7 or the substantial-federal-question doctrine provides a basis for original jurisdiction in federal courts will be a challenge, given the wealth of authority to the contrary. The latter argument may be more acceptable to courts because it does not obviously contravene *Moses H. Cone’s dicta*. Nevertheless, the decision in *Beck’s Superior Hybrids* provides some hope that courts may be willing to seriously consider the argument that Section 7’s text is a clear jurisdic-

tional grant of exclusive jurisdiction to federal district courts.

If either argument above were accepted, an arbitrating party could decide to contest a state court action to enforce a subpoena seeking pre-hearing discovery from a third party by first removing that matter to federal court and then challenging the subpoena on the ground that the

weight of authority has found that these subpoenas are unenforceable under Section 7. Another alternative is to move for dismissal in the state court based on the holding in *Beck's Superior Hybrids*. If these issues are properly briefed, there is a chance that the court could find that Section 7's language does, in fact, provide a basis for federal question, and maybe even exclusive, jurisdiction. ■

ENDNOTES

¹ The FAA applies to all arbitrable transactions "involving commerce," 9 U.S.C. § 2, a term that the Supreme Court interprets broadly. *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003).

² *Life Receivables Trust v. Syndicate 102 at Lloyd's of London*, 549 F.3d 210, 218 (2d Cir. 2008) ("the party seeking discovery is limited to § 7 as a vehicle to enforce the subpoena"); accord *Hay Group v. E.B.S. Acquisition Corp.*, 260 F.3d 404, 406 (3d Cir. 2004) ("An arbitrator's authority over parties that are not contractually bound by the arbitration agreement is strictly limited ... by the [FAA].").

³ 9 U.S.C. § 7.

⁴ E.g., *Life Receivables Trust*, *supra* n. 2, 549 F.3d at 212 (acknowledging circuit split).

⁵ E.g., *id.* at 216-17 ("Section 7 of the FAA does not authorize arbitrators to compel pre-hearing document discovery from entities not party to the arbitration proceedings."); accord *Hay Group*, *supra* n. 2, 260 F.3d at 411; *In re Proshares Trust Sec. Litig.*, No. 09 Civ. 6935, 2010 WL 4967988 (S.D.N.Y. Dec. 1, 2010); *Ware v. C.D. Peacock, Inc.*, No. 10 C 2587, 2010 WL 1856021 (N.D. Ill. May 7, 2010); *Empire Fin. Group v. Pension Fin. Servs., Inc.*, No. 3:09-CV-2155-D, 2010 WL 742579 (N.D. Tex. Mar. 3, 2010); *Kennedy v. American Express Travel Related Servs. Co.*, 646 F. Supp. 2d 1342, 1344 (S.D. Fla. 2009); see also *COMSAT Corp. v. National Sci. Found.*, 190 F.3d 269, 275-76 (4th Cir. 1999) (contemplating a "special need" exception under which a "party might, under unusual circumstances, petition the district court to compel pre-arbitration discovery upon a showing of special need or hardship").

⁶ 28 U.S.C. § 1331. District courts also have jurisdiction in certain specified categories of cases, such as bankruptcy and maritime cases, 28 U.S.C. § 1333, as well as "all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and there is diversity of citizenship between the parties." 28 U.S.C. § 1332. This article is not concerned with these bases of jurisdiction.

⁷ *Murphey v. Lanier*, 204 F.3d 911, 912 (9th Cir. 2000) (quoting the district court as follows: "Because a suit generally 'arises under' the statute that creates the cause of action, 'if federal law creates a plaintiff's cause of action, [federal question] jurisdiction will generally be present.'"); *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916) (Holmes, J.) ("A suit arises under the law that creates the cause of action.").

⁸ In U.S. Code Title 42.

⁹ *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2006); see also *Ledford v. Sullivan*, 105 F.3d 354, 356 (7th Cir. 1997) (quoting *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994)) ("42 U.S.C. § 1983 creates a federal cause of action for 'the deprivation, under color of [state] law, of a citizen's rights, privileges, or immunities secured by the Constitution and laws of the United States.'").

¹⁰ *Thornton v. Southwest Detroit Hosp.*, 895 F.2d 1131, 1133 (6th Cir. 1990); accord *Mikulski v. Centerior Energy Corp.*, 501 F.3d 555, 560 (6th Cir. 2007) (quoting *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 9 (1983): "the substantial-federal-question doctrine ... applies 'where the vindication of a right under state law necessarily turn[s] on some construction of federal law'").

¹¹ 234 F.3d 514, 518-19 (11th Cir. 2000).

¹² Georgia Racketeer Influenced and Corrupt Organizations Act, Ga. Code Ann. § 16-14-1 et seq. (2011).

¹³ 460 U.S. 1, 25 n. 32 (1983).

¹⁴ Although known as a substantive statute that rests on the Commerce Clause, Justice Brennan characterized the FAA as "something of an anomaly in the field of federal court jurisdiction" in concluding that the FAA does not create original jurisdiction in the federal courts.

¹⁵ See *Southland Corp. v. Keating*, 465 U.S. 1, 15 n. 9 (1984); accord *Metro Indus. Painting Corp. v. Terminal Constr. Co.*, 287 F.2d 382, 384 (2d Cir. 1961); *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*, 271 F.2d 402, 408 (2d Cir. 1959); *Krauss Bros. Lumber Co. v. Louis Bossert & Sons*, 62 F.2d 1004 (2d Cir. 1933).

¹⁶ *Supra* n.15, 465 U.S. at 15 n. 9 (quoting FAA §§ 3 & 4).

¹⁷ 95 F.3d 562, 567 (7th Cir. 1996); see also *In re Beck's Superior Hybrids, Inc.*, 940 N.E.2d 352, 359 (Ind. Ct. App. 2011) ("the weight of federal case law demonstrates that neither the Act generally nor Section 7 specifically confers on litigants independent federal subject matter jurisdiction").

¹⁸ 430 F.3d 567, 572 (2d Cir. 2005).

¹⁹ E.g., *Harry Hoffman Printing v. Graphic Comm'n's Int'l Union, Local 261*, 912 F.2d 608, 611 n. 1 (2d Cir. 1990) ("Although the Court in both *Moses H. Cone Memorial Hospital* and *Keating* supported its conclusion by referring to the language of §§ 3 and 4 of the Act, rather than § 10, it would be anomalous to conclude, for example, that § 4 confers no jurisdiction to compel arbitration, but that § 10 confers jurisdiction to vacate an award once arbitration has taken place"); *General Atomic Co. v. United Nuclear Corp.*, 655 F.2d 968, 970 (9th Cir. 1981) ("to require independent jurisdictional grounds under other sections and not under § 9 renders the Act a patchwork of individual statutes bereft of any coherent plan") (internal quotation marks omitted).

²⁰ *Drexel Burnham Lambert v. Valenzuela Bock*, 696 F. Supp. 957, 961 (S.D.N.Y. 1988); see also e.g., *Harry Hoffman Printing*, *supra* n. 19 ("to read § 10 as bestowing jurisdiction to vacate absolutely any arbitration award would open the federal courts to a host of arbitration disputes, an intent that we should not readily impute to Congress"); *Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1471 (11th Cir. 1997) ("a narrow interpretation of section 10 is consistent with the limited nature of federal subject matter jurisdiction").

²¹ E.g., Petition for Letter Rogatory to Enforce Arbitration Subpoena, *Cleveland-Cliffs Iron Co. v. ArcelorMittal USA Inc.*, Case No. 2011-CV-750387 (Cuyahoga County, Ohio Ct. C.P., filed March 7, 2011). In spite of recent authority holding otherwise, the petitioner in *Cleveland-Cliffs* argued that it is "well established" in the federal courts of Ohio "that arbitrators are authorized to

issue third-party subpoenas for pre-hearing document discovery”; the “same logic [should] appl[y] to depositions.” The court relied on *American Fed’n of Television v. WKB7-TV (New World Commun’ns of Detroit, Inc.)* 164 F.3d 1004, 1009).

²² § 1441(a). See also *Davis v. North Carolina Dept. of Correction*, 48 F.3d 134, 138 (4th Cir. 1995).

²³ §§ 1331, 1441(b); See also *Eastman v. Marine Mech. Corp.*, 438 F.3d 544, 550 (6th Cir. 2006) (quoting *Thornton, supra* n. 10: “A claim falls within this court’s original jurisdiction under § 1331 ‘[in] those cases in which a well-pleaded [c]omplaint establishes ... that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law’”); *Mikulski supra* n. 10 (quoting *Franchise Tax Bd., supra* n. 10: “substantial-federal-question doctrine ... applies ‘where the vindication of a right under state law necessarily turn[s] on some construction of federal law’”).

²⁴ E.g., *Mikulski, supra* n. 10, 501 F.3d at 568 (citing cases).

²⁵ *In re Beck’s Superior Hybrids, supra* n. 17, 940 N.E.2d at 354-55.

²⁶ The dissenting judge said that the “exclusive” venue provisions of the Act apply only when a federal court would have subject matter jurisdiction over the action. Therefore, “[i]f there is no federal court jurisdiction, then this is simply an intrastate dispute,” and in this circumstance Indiana Trial Rule 28(E) would apply. *Id.* at 368.

²⁷ *Chair King, Inc. v. Houston Cellular Corp.*, 131 F.3d 507, 510 (5th Cir. 1997) (“Inferior federal courts’ ‘federal question’ jurisdiction ultimately depends on Congress’s intent as manifested by the federal statute creating the cause of action.... The search for Congress’s intent ... must of course begin with the text of the statute itself.”); *International Sci. & Tech. Inst., Inc. v. Inacom Communic’n*, 106 F.3d 1146, 1153-54 (4th Cir. 1997) (“Because federal-question jurisdiction ultimately depends on an act of Congress, the scope of the district courts’ jurisdiction depends on that congressional intent manifested in statute.”).

²⁸ E.g., *Stolt-Nielsen, supra* n. 18.

²⁹ The original phrase was “United States court in and for the district.” In 1951 it was changed to “United States district court for the district.” S. Rep. No. 82-1020, at 2582 (1951). The legislative history provides no specific reason for this particular change, but the general purpose of the legislation that included this amendment was to “make a few improvements of a minor character in certain titles of the United States

Code....” *Id.* at 2578.

³⁰ *United States v. Alisal Water Corp.*, 431 F.3d 643 (9th Cir. 2005) (“absent statutory direction to the contrary, a district court validly exercises its jurisdiction over actions ‘arising under’ federal laws”).

³¹ H.R. Rep. No. 68-96, at 2 (1924).

³² E.g., *United States Int’l Trade Comm’n v. ASAT, Inc.*, 411 F.3d 245, 248, 250 (D.C. Cir. 2005) (holding that, under the text of ... 19 U.S.C. § 1333(b), the district court where an ITC inquiry is carried on “has subject matter jurisdiction to enforce the [c]ommission’s subpoena”; expressly declining to find subject matter jurisdiction pursuant to the “general jurisdictional grants in 28 U.S.C. §§ 1331, 1337, 1345”); *F.T.C. v. Browning*, 435 F.2d 96, 99 (D.C. Cir. 1970) (§ 9 of the FTC Act “must be interpreted as a special grant of jurisdiction” to federal district courts to enforce subpoenas issued by the commission where an inquiry is conducted).

³³ 19 U.S.C. § 1333(b).

³⁴ See, e.g., *Federal Nat’l. Mortg. Ass’n v. Hammond*, No. CV 11-00867, 2011 WL 2516498 (C.D. Cal. June 22, 2011) (“Certain federal agencies’ charters provide that federal courts will have original jurisdiction over suits involving those agencies”; the Freddie Mac charter does but the Fannie Mae charter does not); *Mendrala v. Crown Mortg. Co.*, 955 F.2d 1132, 1135 (7th Cir. 1992) (“Congress specifically provided for the [Federal Home Loan Mortgage Corp.] to be an ‘agency’ for purposes of” having original jurisdiction for “bringing suit” in federal court and for “removal,” but did not so provide for purposes of being a defendant (§ 1346) or for purposes of the [Federal Tort Claims Act] itself [§ 2671], it therefore intended the FHLMC not to be a federal agency for the latter purposes”).

³⁵ E.g., *Teamsters Nat’l Auto. Transporters Indus. Negotiating Comm’n v. Troha*, 328 F.3d 325, 331 (7th Cir. 2003); accord *Walt Disney Co. v. National Ass’n of Broad. Employees & Technicians*, No. 10 Civ. 5982, 2010 WL 3563110, *slip op.* (S.D.N.Y. Sept. 10, 2010). The Labor Management Relations Act is at 29 U.S.C. § 185.

³⁶ *S.E.C. v. Lines Overseas Mgmt., Ltd.*, No. Civ. A. 04-302, 2005 WL 3627141 (D.D.C. Jan. 7, 2005) (SEC subpoena). See “Administrative and Labor Arbitration Subpoenas” at page 28 *supra*.

³⁷ See n. 20 *supra*.

³⁸ 47 U.S.C. § 227.

³⁹ *ErieNet, Inc. v. Velocity Net, Inc.*, 156 F.3d 513, 516-17 (3d Cir. 1998).

⁴⁰ See “Grounds for Removal” on page 27, *supra*.

⁴¹ When a party relies on both § 7 and a comparable state statute, only one statute needs to provide a basis for federal question jurisdiction for removal to be proper. See *Wisconsin Dept. of Corrections v. Schacht*, 524 U.S. 381, 387 (1998) (quoting 28 U.S.C. § 1441(c), and noting that § 1441(c) “explicitly provid[es] discretionary removal jurisdiction over entire case where federal claim is accompanied by a ‘separate and independent’ state-law claim”).

⁴² E.g., compare Ohio Rev. Code Ann. § 2711.06 (“The arbitrators ... may subpoena in writing any person to attend before any of them as a witness and in a proper case to bring with him any book, record, document, or paper which is deemed material as evidence in the case.”), with the language in 9 U.S.C. § 7. It should also be noted that, to the extent a state statute allows broader discovery than § 7, it would arguably be unenforceable based on the conflict preemption doctrine. *Volt Info. Sci., Inc. v. Board of Trustees of Leland Stanford Jr. Univ.*, 489 U.S. 468, 477-78 (1989) (recognizing that a state arbitration act’s procedural rule is preempted by the FAA if the effect of that state rule “would undermine the goals and policies of the FAA”).

⁴³ See ns. 4 & 5, *supra*.

⁴⁴ E.g., *Mikulski, supra*, n. 10, 501 F.3d at 570 (the following four factors are normally considered in addressing the substantiality of federal interest in a disputed issue: “(1) whether the case includes a federal agency... (2) whether the federal question is important (i.e., not trivial); (3) whether a decision on the federal question will resolve the case (i.e., the federal question is not merely incidental to the outcome); and (4) whether a decision as to the federal question will control numerous other cases (i.e., the issue is not anomalous or isolated).”

⁴⁵ Interpreting the relevant language of § 7 to allow full-blown third-party discovery in an arbitration could be contrary to the reasons that many parties agree to arbitrate as opposed to seeking relief in court. See, e.g., *COMSAT Corp., supra* n. 5 (“Parties to a private arbitration agreement forego certain procedural rights attendant to formal litigation in return for a more efficient and cost-effective resolution of their disputes ... because [the parties] have elected to enter arbitration, neither may reasonably expect to obtain full-blown discovery from the other or from third parties.”).

⁴⁶ See ns. 4 & 5, *supra*.