1967

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Robert L. Berchem

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LABOR DEMOCRACY IN AMERICA:
THE IMPACT OF TITLES
I & IV OF THE LANDRUM-GRiffin ACT

ROBERT L. BERCHEM*

I. INTRODUCTION

SINCE ITS ENACTMENT in 1959, the widely known Landrum-Griffin Act (the Labor-Management Reporting and Disclosure Act of 1959) has been the subject of constant discussion, both academic and pragmatic. Such attention is most certainly justified, and in fact obligatory, for as will be amplified subsequently, this Act is the product of a radical change in congressional attitude toward the problems of internal union government. However, due to the fact that the Act is not definitive in language or scope, it has been the subject of constant judicial interpretation, with the result that it has far outstripped its original statutory framework. It is precisely because of this judicial reconstruction during the past eight years that I have undertaken to reanalyze and recast the Act as it actually stands today. In so doing, I have adhered to its statutory framework for reasons of topical and logical continuity, and have, within such a guideline, sought to analyze its development from a case law perspective.

II. HISTORICAL BACKGROUND

The Labor-Management Reporting and Disclosure Act of 1959 represents a unique departure from the long established principle of American legislative and judicial experience that the internal mechanics of voluntary associations are beyond the reach of governmental regulation.2 Founded upon the firm conviction that "racketeering, corrup-
tion, abuse of power, and other improper practices on the part of some labor organizations [could not] be prevented until and unless the Congress of the United States [had] the wisdom and the courage to enact laws prescribing minimum standards of democratic process and conduct for the administration of internal union affairs," the statute itself is far less noble in character. It is, in fact, a prime example of the fine art of political compromise.

Conceived as early as 1943, the idea of external enforcement of democracy within the structure of organized labor drew growing support both from the liberal left and, for pragmatic purposes, from management. Resting upon the often articulated assumption, apparently accepted de fide by Congress, that labor organizations should function democratically, the LMRDA, consistent with these ideological origins, envisions a two-fold union governmental structure wherein decisions are subject to the influence of the rank and file, and majorities tolerate the existence and views of minorities. Titles I and IV of the Act, in

the complex relationships within the union or their ability to supervise the union's internal operation.

Summers, The Impact of Landrum-Griffin in State Courts, 13 N.Y.U. CONFERENCE ON LABOR 333, 338 (1960). Professor Summers, however, has been its leading iconoclast. See, e.g., Summers, Legal Limitations on Union Discipline, 64 HARV. L. REV. 1049 (1951); Summers, Disciplinary Procedures of Unions, 4 IND. & LAB. REL. REV. 15 (1950); Summers, Disciplinary Powers of Unions, 3 IND. & LAB. REL. REV. 483 (1950).


5. See American Civil Liberties Union, Democracy in Trade Unions (1943). The first formal implementation of the ACLU's program came in 1947, when it submitted a proposed union democracy statute to Congress. See Hearings Before the House Comm. on Education and Labor on Bills to Amend or Repeal the National Labor Relations Act, 80th Cong., 1st Sess. 3633-43 (1947). For a discussion of this and other similar legislation see Aaron & Komaroff, Statutory Regulation of Internal Union Affairs — II, 44 ILL. L. REV. 631 (1949).

6. The practicality of this thesis has received academic challenge. See Magrath, Democracy in Overalls: The Futile Quest for Union Democracy, 12 IND. & LAB. REL. REV. 503 (1959). However, it does undeniably stand — as it must — as the utopian goal of the American labor movement. "An individual worker gains no human rights by substituting an autocratic union officialdom for the tyranny of the boss. Only a democratic union, sensitive to the rights of the minorities, can help men achieve the ideals of individual responsibility, equality of opportunity, and self-determination." Cox, The Role of Law in Preserving Union Democracy, 72 HARV. L. REV. 609, 609-10 (1959). But see W. Wirtz, Labor and the Public Interest 85 (1964).

7. The term "democracy" as used in labor relations law has been defined quite differently by several commentators who view the relationship between labor and management as a constant series of confrontations between incompatible interests. Under this definition, a union's "democracy" is measured insofar as it represents the interests of its members — regardless of the nature of its internal government or its responsiveness to its membership. It is doubtful whether such an approach — precluding from its validity — could ever find general acceptance either in Congress or in the American labor movement. See note 6 supra. See also S. Lipset, Union Democ-
particular, are directed toward this end. Title I provides for a privately enforceable "Bill of Rights" for union members; more specifically, it provides for equal rights with reference to nominating, voting, meeting participation, freedom of speech and assembly, protection from arbitrary dues collection, and the right to sue, as well as safeguards against improper disciplinary action. Title IV, on the other hand, regulates the mode in which rights are exercised by establishing detailed procedures for nominating, campaigning, and voting in union elections.  

III. TITLE I: SCOPE OF THE BILL OF RIGHTS

A. The Membership Limitation

Title I, as might be expected in view of its spotty legislative history, is severely limited in the scope of its application and applies only to "members" of labor organizations. A member, as defined, "includes any person who has fulfilled the requirements for membership in such organization" and who has neither withdrawn, been expelled, or suspended. This legislative definition is certainly not a broad one, and despite the hopes expressed by several early commentators, particularly with reference to racial problems, it has been narrowly construed by the courts.


10. See note 4 supra.

11. While the ensuing discussion will demonstrate the extent of controversy over the question of who is a "member," it has never been seriously disputed that an acknowledged "non-member" was without rights under the Act. Johnson v. Local 58, Elec. Workers, 181 F. Supp. 734 (E.D. Mich. 1960); see Stone v. Local 29, Boiler-makers, 55 CCH Lab. Cas. ¶ 11,736 (D. Mass. 1967) (validly expelled member not entitled to bring Title I action). But cf. Axelrod v. Stoltz, 264 F. Supp. 536 (E.D. Pa. 1967) (suspended member entitled to sue for reinstatement upon expiration of his suspension). A non-member employee does, however, have a right to obtain a copy of the collective bargaining contract under which he is working from the union which negotiated it. 29 U.S.C. § 414 (1964).

12. The Act is applicable only to individuals. Therefore, for example, it provides no relief in an action in which a local union alleges a Title I violation on the part of a district council. Cox v. Hutcheson, 204 F. Supp. 442 (S.D. Ind. 1962).


14. The original bill passed by the Senate included within its definition anyone who "tendered" the lawful requirements for union membership. S. 1555, 86th Cong., 1st Sess. § 601(n) (1959). It was deleted however in the final draft. This had the effect of rendering Title 1 consistent with section 8(b)(1)(A) of the National Labor Relations Act [hereinafter cited as NLRA], insofar as the latter provided that nothing within it should be considered as "impair[ing] the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." 29 U.S.C. § 158(b)(1)(A).


16. See pp. 4-5 infra.
In *Hughes v. Local 11, Iron Workers,* plaintiff, a member of the International Union, requested a transfer from his home local to the defendant local. The defendant, while allowing the plaintiff to work in its area, refused to grant him a formal transfer permit; likewise, while allowing him to attend its meetings, it refused to let him participate or vote. Claiming that he was being denied equal rights and privileges as guaranteed by section 101(a)(1) of Title I, the plaintiff brought a private civil suit to enforce them. The district court, reading the definitional section of a "member" narrowly, dismissed the suit for lack of jurisdiction, holding that Title I "has no relation to extrinsic matters such as the right to transfer to or from an organization." The court of appeals reversed. Noting that plaintiff was already a member of the International Union, and entitled by the International's constitution to a transfer as a matter of right, it distinguished the case from the standard situation where a voluntary association has a "reservation of power" upon which to base a discretionary denial of admission. The court left little doubt that it in no way intended to limit the rights of labor organizations to establish restrictive requirements for membership and essentially limited the case to its facts, some broad phraseology notwithstanding.

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17. 287 F.2d 810 (3d Cir. 1961).
18. See note 39 infra. As a means of enforcement, the private suit was an afterthought on the part of most of the LMRDA's proponents. See Cox, supra note 4, at 832-33. It was, however, considered to be of some significance. As Senator Kuchel stated when he introduced the provision:

[H]ere . . . is one of the major changes in the proposal. The Amendment of the Senator from Arkansas provided that the Secretary of Labor might, on behalf of the injured or aggrieved member, have the right to litigate the alleged grievance and to seek an injunction or other relief. We believe that giving this type of right to the aggrieved employee member himself is in the interest of justice. . . . 105 Cong. Rec. 6720 (1959).

The validity of this thesis is, however, subject to some question. For although private suits are speedy, they are also costly. Conversely, public suits, although slower, benefit from the expertise of the administrative prosecutor and cost the individual litigant nothing.

20. Prefatorily the court noted that a dismissal for lack of jurisdiction was improper under any circumstances. Under such an analysis a district court would be required to first determine the substantive validity of an asserted claim, i.e., whether a plaintiff was a "member," before being able to assume jurisdiction. "The well-established practice, on the other hand, has been that the assertion of a substantial claim under a federal statute gives a United States court jurisdiction of that claim even though that court may determine ultimately that no cause of action on which relief could be granted was alleged." 287 F.2d at 814. See Bell v. Hood, 327 U.S. 678 (1946).
21. For reasons known best only to themselves, locals within the International Association of Iron Workers have been consistently reluctant to allow free transfers between one another. See, e.g., Ferger v. Local 483, Iron Workers, 356 F.2d 854 (3d Cir. 1966). While the "transfer" cases have not provided any significant law of general application, they have posed an interesting problem as to the extent to which relief is available under Title I. Thus far, where a cause of action has been found, relief has been limited to a granting of "rights to membership," rather than "membership" itself, Ferger v. Local 483, Iron Workers, 238 F. Supp. 1016 (D.N.J. 1964). The Third Circuit, however, in *Ferger,* indicated a willingness to clarify the issue. 356 F.2d at 855.
22. The Act's protection is extended to those who are everything that members are, to those who are in substance members, despite the fact that the officials of
Any possible doubts to the contrary were put to rest by the Ninth Circuit in *Moynahan v. Pari-Mutuel Employee Guild, Local 280.* In *Moynahan*, the plaintiff had fulfilled all requirements for union membership except for receiving a two-thirds vote of approval from the defendant’s membership. In his complaint he alleged that defendant, by arbitrarily refusing him admission, prevented him from obtaining work as a pari-mutuel clerk since all such jobs were subject to a closed shop agreement. Despite the obvious attraction of such facts as an interpretative vehicle, the court held that the requirement of a two-thirds vote could “hardly be characterized as a mere formality or ministerial act,” and that, therefore, the membership requirements were not met. It distinguished *Hughes* on the grounds that there the local union had no valid right to refuse plaintiff’s transfer application.

Regardless of whatever policy criticisms the composite *Hughes-Moynahan* result provokes, in view of the legislative background upon which it rests, no other result would have been justified. Furthermore, it is not surprising. The concept of unions as voluntary associations, with all its resultant ramifications, is deeply rooted. While it has certainly been shaken by the passage of the LMRDA, it was far from toppled, especially in the courts where the passage of time has rendered it near sacred. Even without the legislative background of the Act, it is doubtful that the courts would have given Title I a wide range of application; the presence of a limited legislative intent merely insured that they would not.
A further corollary to the restriction of the benefits of Title I to union "members" is that, even as to members, these benefits accrue only insofar as explicitly secured membership rights of Title I are involved. Neither union employees nor union officials have standing to sue to protect their jobs or positions even if they are coincidentally members. Likewise, because of the lack of union involvement, members may not sue fellow members, although in certain cases criminal san-

345 U.S. 330 (1953); Steele v. Louisville & Nashville R.R., 323 U.S. 192 (1944); see Blumrosen, The Worker and Three Phases of Unionism: Administrative and Judicial Control of the Worker-Union Relationship, 61 Mich. L. Rev. 1435, 1464-1523 (1963); Cox, The Duty of Fair Representation, 2 Vill. L. Rev. 151 (1957). For such an individual, a union is hardly a "voluntary" association; for such an association, legitimated and certified by the government, voluntariness is hardly necessary. See S. SLICHTER, THE CHALLENGE OF INDUSTRIAL RELATIONS 118-20, 123 (1947). Much of this harshness has, however, been alleviated by the passage of the Civil Rights Act of 1964 which severely limits unions' powers of exclusion. See 42 U.S.C. §§ 2000e-2 to 3 (1964).

29. Even where this condition is met, jurisdiction under Title I may be preempted by the National Labor Relations Act. For example, in Barunica v. Hatters Workers Local 55, 321 F.2d 764 (8th Cir. 1963), where plaintiff essentially alleged that the union had maliciously discriminated against her by refusing to refer her out for employment, the court held that this stated, at best, a section 8(b)(2) unfair labor practice within the exclusive jurisdiction of the Labor Board. Accord, Knox v. UAW Local 900, 223 F. Supp. 1009 (E.D. Mich. 1963), aff'd, 351 F.2d 72 (6th Cir. 1965) (allegation of unfair representation); Green v. Local 705, Hotel Employees, 220 F. Supp. 505 (E.D. Mich. 1963) (allegation of discrimination in job referral); cf. Local 100, United Ass'n of Journeymen v. Borden, 373 U.S. 690 (1963); San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959). However, both the Third and Fourth Circuits have assumed jurisdiction of section 101(a)(5) cases even though the "discipline" imposed by the union might have constituted unfair labor practices. See Rekant v. Shochtay-Gasos Local 446, Meatcutters, 320 F.2d 271 (3d Cir. 1963); Parks v. International Bhd. of Elec. Workers, 314 F. Supp. 886 (4th Cir.), cert. denied, 372 U.S. 976 (1963).

30. In Strauss v. International Bhd. of Teamsters, 179 F. Supp. 297 (E.D. Pa. 1959), where a union business agent was removed without a hearing because of a past criminal record, his suit was dismissed since it did not deal with a union-member relationship but rather an employer (union-employee (business agent) relationship. The common law of employment contracts, rather than Title I, was held to provide whatever remedies he was entitled to. Accord, Sheridan v. Carpenters Local 626, 306 F.2d 152 (3d Cir. 1962) (union business agent); Bennet v. Hoisting Eng'rs Local 701, 207 F. Supp. 361 (D. Ore. 1960) (field representative); Jackson v. Martin Co., 180 F. Supp. 475 (D. Md. 1960) (union committee man); cf. Fanning v. United Scenic Artists Local 829, 54 CCH Lab. Cas. ¶ 11,678 (S.D.N.Y. 1967).


32. In Tomko v. Hilbert, 288 F.2d 625 (3d Cir. 1961), where plaintiff alleged that defendants, who were union officials, had libeled and assaulted him, his complaint was dismissed since it named defendants only as individuals, not union officials. Title I was held not to provide a civil remedy for the vindication of rights contained in the bill of rights against one who in violating such rights is not acting in the capacity of an official or agent of a labor union." Id. at 625-26. While the case initially prompted fears of potential abuse, see Thatcher, Rights of Individual Union Members under Title I and Section 307 of the Landrum-Griffin Act, 52 Geo. L.J. 339, 341 (1964), they have proven to be unjustified.
tions are available. These limitations are both justified and necessary to prevent Title I from assuming omnibus stature; furthermore, in each instance, adequate alternative remedies are available.

B. Equal Rights and Privileges

Section 101(a) (1) of the "Bill of Rights" provision of Title I specifically guarantees to union members, subject to reasonable regulation, equal rights and privileges in nominating and voting in elections and in attending and participating at meetings. Its obvious purpose is to promote the interests of union democracy by protecting the rights of individual union members vis-à-vis their unions. Unfortunately, in addition to its basic conceptual limitations, its ability to achieve that goal has been further circumscribed by recent judicial interpretation.

1. Right to Nominate and Vote

The right to nominate and vote, as provided by Title I, is paralleled in Title IV by section 401(e) which requires that in any union election "... a reasonable opportunity shall be given for the nomination of candidates and every member in good standing ... shall have the right to vote. ..." The interrelationship of these guarantees, aside from academic curiosity, assumes significant stature in the administration of the LMRDA because of the diversity of relief available under each. Under Title I, the appropriate means of relief is the immediate filing of a private civil suit in the federal district court by the aggrieved member. A Title IV case, on the other hand, in addition to being

33. In United States v. Roganovich, 318 F.2d 167 (7th Cir. 1963), where plaintiff was attacked at a union meeting by two fellow members, a criminal action could be brought against the assailants under section 610, 29 U.S.C. § 530 (1964), even though they were not acting for or on behalf of the union. Section 610, by its language, applies to the activities of "any person" whereas section 102, 29 U.S.C. § 412 (1964), applies only to labor organizations or their representatives.

34. For case law analysis of the "reasonable rules and regulations" provisions of section 101(a) (1) (2), see pp. 38-40 infra.

35. The statute reads:
Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitutions and bylaws. 29 U.S.C. § 411(a)(1) (1964).


39. 29 U.S.C. § 412 (1964) provides: Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter
limited to post-election remedies, requires that the complaining parties press their action indirectly. No private civil suit is authorized; rather, a complaint must first be filed with the Secretary of Labor who, if he finds probable cause to believe that a violation has taken place, may file suit in an appropriate federal district court. Apart from considerations of individual expense, the tactical disadvantages of this procedure are obvious. Faced with oftentimes flagrant abuses of their rights during the course of union elections, union members began, predictably, to file Title I suits; incumbent union officials, with equal predictability, moved to dismiss these suits on jurisdictional grounds, arguing that Title IV provided the exclusive remedy for election abuses.

In *Beckman v. Local 46, Ironworkers,* plaintiff alleged in substance that defendants had "stuffed" the ballot box in their local union's election. In affirming the district court's injunction which restrained the removal or counting of the contested votes, the court of appeals found that the complaint did state a claim for violation of Title I's "right to vote" clause in that although each member voted, his vote was not effective. In *Robins v. Rarback,* however, the Second Circuit took a narrower view. Plaintiff there alleged that defendants had allowed non-registered voters to participate in their local election and had not protected the secrecy of the ballot. The court, in affirming the dismissal of the complaint, noted that it was most unlikely that Congress "would have provided these elaborate protections against unjustifiable interference with internal union processes [Title IV] if it had intended at the same time that the courts should be free under Title I of the

may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate."

Although injunctive relief is probably the most frequent form of relief, damage awards are not uncommon. While there is a split of authority on whether punitive damages may be obtained, there is no question but that compensatory awards are available, subject, of course, to common law rules of causation. McCraw v. United Ass'n of Plumbers, 216 F. Supp. 655 (E.D. Tenn. 1963), aff'd, 341 F.2d 705 (6th Cir. 1965). Thus, for example, emotional distress, standing alone, is not a proper element of damage. International Bhd. of Boilermakers v. Rafferty, 348 F.2d 307 (9th Cir. 1965). But it is when coupled with injury to reputation. Simmons v. Avisco, Local 713, Textile Workers, 350 F.2d 1012 (4th Cir. 1965).

There is also a split of authority on the availability of a jury trial. Compare Simmons v. Avisco, Local 713, Textile Workers, supra, with McCraw v. United Ass'n of Plumbers, supra; see Note, 35 U. Cin. L. Rev. 459 (1966). However, there is no question but that attorney's fees are not recoverable. Vars v. International Bhd. of Boilermakers, 204 F. Supp. 241 (D. Conn. 1962).

There are two exceptions to this restriction. Section 401(c) of the Act, 29 U.S.C. § 481(c) (1964), authorizes pre-election suits by any bona fide candidate for union office to enforce his guaranteed right to inspect membership lists. Additionally, section 403 allows pre-election state court suits to enforce union constitutions.

40. There are two exceptions to this restriction. See p. 45 infra.


42. 325 F.2d 929 (2d Cir. 1963).
Act to reach the same result at the instance of the complaining member alone . . ."44 without requiring either an exhaustion of remedies or investigation by the Secretary of Labor. It should be noted that here the "right to vote" per se was not violated, but rather the effectiveness of the vote was interfered with. Faced with such diversity of interpretation,45 the Supreme Court granted review of Calhoon v. Harvey.46

In Calhoon three members of a local union filed a Title I suit alleging that their rights to nominate candidates, as guaranteed by section 101(a)(1), were violated by the union's bylaws which provided for self-nomination only and by the national constitution which restricted candidacy eligibility to five year members who had been active in the trade.47 Noting that Title I had been added to the LMRDA because Title IV did not go "far enough in protecting basic rights of union members,"48 and that even at common law plaintiffs would have been able to have had defendant's classification scheme declared invalid, the court of appeals concluded that it would be singularly anomalous to read Title IV as foreclosing all Title I relief for overlapping claims of unreasonable union classification. Without considering either regulation separately, it therefore held that the "combined effect of the [candidacy] eligibility requirements and the restriction to self-nomination"49 was sufficient to state a Title I nomination case. The Supreme Court, however, reversed50 and held that section 101(a)(1) was "no more than a command that members and classes of members shall not be discriminated against in their right to nominate and vote,"51 and that furthermore, in determining whether or not discrimination exists, "possible violations of Title IV . . . regarding [candidacy] eligibility are not relevant. . . ."52 Put another way, it determined that so long as a union's regulations are applied "equally," they are safe from Title I sanction regardless of their unreasonableness.

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44. Id. at 931. The same court, albeit a different panel, did not feel so restricted in interpreting the "right to nominate" clause of section 101(a)(1). See Harvey v. Calhoon, 324 F.2d 486 (2d Cir. 1963).


47. As members of the National Marine Engineers' Beneficial Association, candidates were required to have served 180 days or more of sea-time in each of two of the preceding three years on vessels subject to union negotiated collective bargaining agreements.


49. Id. at 489.


51. Id. at 139.

52. Id.
There is no question but that section 101(a)(1) grants no substantive right to vote as such, for by its own terms, it merely seeks to impose an equality of rights rather than rights themselves. However, to adopt an interpretation of this section which does not provide for effective equality in voting, similar to that granted in the reapportionment cases, and which authorizes pro forma observation of those rights which are granted, is singularly objectionable. Prior to Landrum-Griffin, even though rights were often granted in a discriminatory fashion, when granted, they were at least considered meaningful. As a result of the Calhoon Court’s interpretation of section 101(a)(1), however, there is provided to unions a decidedly convenient means of subtle rather than blatant disenfranchisement.

The Calhoon decision is based upon an interpretation of congressional intent — an extremely difficult item to discern in the historical context of the LMRDA. The disparity between courts of appeals — resulting in even internal inconsistency — provides convincing evidence of its elusiveness in this specific area. Against such a background, Calhoon is open to particularly severe criticism for, although essentially free to adopt a reasonable construction of the statute upon policy grounds, the Court nevertheless saw fit to emasculate it. Certainly congressional policy would not be furthered by authorizing full scale pre-election intervention by private suit; but neither is it aided by the imposition of a de facto blanket prohibition. The approach used by the Second Circuit — allowing more egregious violations which overlap both titles to be speedily remedied under Title I — would appear to have been far more consistent with the basic congressional intent of flexibly protecting the rights of individual union members.

Although Calhoon has been read as merely stating that Title I was inapplicable because plaintiffs were in fact alleging a Title IV candidacy infringement rather than a nomination deprivation, such an approach, while desirable to the extent that it mitigates much of the formal emasculative effect of the decision, flies in the face of the Court’s plain wording. In any event, whether the Court’s interpret-

53. The same holds true, of course, with reference to the rights of nomination and meeting participation. See p. 13 infra.
54. The essence of Baker v. Carr, 369 U.S. 186 (1962), and its progeny was a guarantee of the effective exercise of the franchise by means of the one man-one vote principle.
57. See note 59 infra.
58. Justice Stewart in his concurring opinion stated his view on Calhoon’s effect: After today, simply by framing its discriminatory rules in terms of eligibility,
tation of section 101(a)(1) be considered as a holding or dictum, its practical effect upon the lower courts, and hence upon the administration of the Act itself, has been the same. 68

In the wake of Calhoon, it is difficult to postulate what influence section 101(a)(1) will exert in the administration of union democracy. While recent case law amply demonstrates the continued vitality of section 101(a)(1), there is no escaping the fact that it is far from the fundamental guarantee envisioned by its authors. 60 Even to the extent that it is applicable, it is not absolute. 61 If a union member is fairly convicted of violating his union's constitution or bylaws, his right to nominate and vote may be suspended as a disciplinary measure. 62

And while several pre-Calhoon cases interpreted section 101(a)(1) as prohibiting pro forma voting, 63 in view of the doubts which Calhoon necessarily has placed on their validity, 64 perhaps the most important union can immunize itself from pre-election attack in a federal court even though it makes deep incursions on the equal rights of its members to nominate, to vote, and to participate in the union's internal affairs.

379 U.S. at 140.

59. Post-Calhoon case law has evidenced an extremely narrow reading of section 101(a)(1). For example, in Avery v. International Alliance of Stage Employees, 54 CCH Lab. Cas. ¶ 11,453 (N.D. Cal. 1965), where plaintiffs filed a Title I suit challenging the validity of a local union's procedure for nominating delegates to the international's convention, the court, without commenting on the reasonableness of the procedure, held that no Title I case had been alleged since the claimed discrimination arose from requirements equally applicable to all. Likewise in Paravate v. Local 13, Ins. Workers, 51 CCH Lab. Cas. ¶ 19,695 (W.D. Pa. 1965), where plaintiffs filed a Title I suit challenging the validity of defendants' officers conduct in voiding a nomination procedure under which they had been nominated as representatives to their international's convention, the court held that since the complaint merely went to "the propriety of a certain method of nomination" and not to any questions of unequal application, it was an exclusively Title IV issue. The same conclusion dealing with the right to vote was reached in Jennings v. Carey, 51 CCH Lab. Cas. ¶ 19,423 (D.D.C. 1964). On the other hand, in O'Brien v. Paddock, 246 F. Supp. 809 (S.D.N.Y. 1965), where plaintiffs, associate members of the defendant union, alleged that they were being denied their equal right to vote, the court denied a motion to dismiss based upon Calhoon. See Vestal v. International Bhd. of Teamsters, 245 F. Supp. 623 (M.D. Tenn. 1965); cf. Local 115, Carpenters v. United Bhd. of Carpenters, 247 F. Supp. 660 (D. Conn. 1965). The short of it is that in the post-Calhoon LMRDA no Title I actions will be allowed unless they are specifically phrased in terms of inequality of application, that is, discrimination. It seems certain that "discrimination," despite its amenability to elastic construction, will be narrowly confined to its literal boundaries.


61. Even if a member is deprived of his right to vote, no relief is available if his vote would have been ineffectual anyway. Wingate v. Local 107, Teamsters, 51 CCH Lab. Cas. ¶ 19,643 (D. Del. 1964). The jurisdictional basis of the court's decision is open to question. See note 73 infra.


63. In Young v. Hayes, 195 F. Supp. 911 (D.D.C. 1961), where a local union submitted forty-seven proposed constitutional changes under one heading, thus providing for only one general vote, the court held that section 101(a)(1) was "enforceable...by the membership...to insure that ballots for referendums are submitted in a suitable form." Id. at 917. In Kolmonen v. Hod Carriers Local 1191, 215 F. Supp. 703 (W.D. Mich. 1963), where only one polling place was established for an entire statewide area, this was held to be a violation of section 101(a)(1). No relief was granted however since the election challenged had already been held, the court ruling that Title IV provided exclusive post-election remedies.

effect of section 101(a)(1) is its ability to check intra-union gerrymandering.

*Vestal v. International Bhd. of Teamsters* provides a classic example. In *Vestal* the local Teamster union was composed of "freighters" and "non-freighters." Upon receiving a petition requesting that the "freighters" be granted a charter of their own, the General Executive Board of the International directed that an election be held among the "freighters" only. The district court, after finding no basis in the International's constitution for such a limited vote, held that the "non-freighters" were being deprived of their right to the equal vote accorded them by the International's constitution, and declared the referendum null and void.

Where voting participation is in accord with union bylaws, however, there is a strong presumption of its legality even if it disenfranchises a section of the union's membership. In *Cleveland Orchestra Comm. v. Musicians, Local* the union's bylaws provided that symphony musicians were to be paid according to the terms of a collective bargaining agreement negotiated on their behalf by the union. The symphony musicians themselves had no direct vote on whether to accept or reject their contract. Other musicians in the union, however, who worked on a short engagement basis, were paid under a wage scale which they individually negotiated. When the symphony musicians sued to enjoin the union from entering into another long-term contract because of their inability to ratify or reject, the court dismissed their action and held that "the statute does not require or provide that members of a labor organization have the right to vote on the business of negotiating, executing, and approving contracts of employment, unless . . . [it] become[s] the business of a membership meeting." Since the bylaws of the Federation did not provide for a ratification vote, since the contract was never the subject of business at any meetings, and, even more importantly, since the court found no lack of fair representation, plaintiffs were entitled to no relief under section 101(a)(1).
In general, therefore, so long as a union’s bylaws and constitution are not discriminatory and are applied as written, section 101(a)(1) will provide no authorization for judicial intervention. Since “[g]eneral supervision of unions by the courts [does] not contribute to the betterment of the unions or their members or to the cause of labor-management relations,” this is an acceptable result. For although the authors of Title I undoubtedly envisioned a wider range of application than the Title presently has, it is doubtful that they would have approved of anything more intensive in the voting-representation area than is allowed by Vestal and Cleveland Orchestra. Lack of jurisdictional scope, not substantive depth, is the key criticism of post-Calhoon Title I.

2. Right to Attend and Participate at Union Meetings

While not of great independent significance, section 101(a)(1)’s guarantee of the right to attendance and participation at union meetings does effectively concretize what otherwise would have been impliedly drawn from Title I’s “free speech and assembly” guarantees. This is, however, of significant value, for assuming the existence of the right, its applications are obvious. It provides no right to have meetings called or held at specific times, but is addressed solely to procedures at meetings when called. The union’s right to exercise reasonable control to maintain order at its meetings is, of course, left unaffected by the Act. Thus where a union officer refused to entertain a motion which had been defeated for a second time just one month previously, the refusal was held to be a justified exercise of parliamentary procedure. Conversely, a union’s failure to maintain proper order can also constitute a violation of section 101(a)(1). In fact, laxity in this respect has unfortunately resulted in saddling this guarantee with the dubious distinction of having its provisions frequently enforced under section 610, the LMRDA’s criminal arm. In short, therefore, this sub-

71. See, e.g., Acevedo v. Local 25, Book Binders, 196 F. Supp. 308 (S.D.N.Y. 1961), where the union unreasonably created special classes of voting rights so as to deprive a large segment of the local of proper representation.
73. It is still uncertain, but highly doubtful, whether Title I suits may be filed after an election has been conducted. O’Brien v. Paddock, 52 CCH Lab. Cas. ¶ 16,838 (S.D.N.Y. 1965).
76. In Allen v. Local 92, Iron Workers, 41 CCH Lab. Cas. ¶ 16,697 (N.D. Ala. 1960), a local union was found to have violated the rights of two of its members by failing to maintain order while they spoke and by threatening one member with physical harm.
77. 29 U.S.C. § 530 (1964); see note 33 supra.
section simply provides for a correlative right-duty implementation of parliamentary procedure at union meetings.

C. Freedom of Speech and Assembly

The guarantee of "freedom of speech and assembly" is the cornerstone of Title I. These freedoms have been aptly described as "the nerve centres of the democratic process. . . ." Without them, regardless of the technical success of any other aspect of a program of legislated democracy, there can be no realistic embodiment of the democratic spirit. As originally drafted, speech and assembly were the subjects of separate guarantees — and were absolute. Subsequent amendments, however, joined them and provided that labor organizations might, in certain instances, restrict them. While this promoted fears among some legislators that the guarantees would thereby be rendered ineffectual, these fears have proven groundless in light of the liberal judicial interpretation which section 101(a)(2) has received.

One of the primary areas of application for section 101(a)(2) is that of libel and slander of union officials by members. In Salzhandler v. Caputo, plaintiff, the financial secretary of a local union issued a newsletter in which he accused the union's president of being, among other things, a "petty robber." The president then filed charges with the District Council alleging that plaintiff had libeled him and had committed "acts . . . inconsistent with the duties, obligations and fealty of a member or officer of the Brotherhood." The District Council's Trial Board found plaintiff guilty as charged and suspended his voting and participation rights for five years. Plaintiff subsequently filed suit

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81. 29 U.S.C. § 411(a)(2) (1964) reads:
Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.
This proviso was deemed necessary since "[d]issent in a union, like treason within a nation, must be suppressed if the purpose is to destroy the union, encourage a rival, or bring about the violation of legal or contractual obligations." Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 834-35 (1960).
82. See, e.g., remarks of Senator Goldwater, in 105 CONG. REC. 6722 (1959).
84. Id. at 447.
85. Id. at 448.
in the federal district court alleging a violation of his right to "free speech." The district court dismissed the complaint holding that Title I did not include the right of a union member to libel or slander officers of the union.86 The court of appeals reversed and held that plaintiff "had a right to speak his mind and spread his opinion regarding the union officers, regardless of whether his statements were true or false."87 The court emphasized that if unions were free to punish members for offences of such a nature, section 101(a)(2) would be effectively emasculated since union officials were almost always likely to view criticism of their management as defamatory. It further found that neither of the authorized exceptions to the congressional guarantee were applicable since the statements were never claimed to have interfered with any of the union's legal or contractual relationships and since it was clearly "in the interest of proper and honest management of union affairs to permit members to question" their official's management.88 Subsequent decisions have even further amplified the near absolute scope of this "free speech guarantee." Thus in Cole v. Hall,89 where plaintiff was found guilty of "malicious vilification" of union officials, the court held that Salzhandler applied, the presence of malice notwithstanding.

Attacks by members on union policy and procedures have likewise been protected. In Farowitz v. Local 802, Associated Musicians,90 plaintiff claimed that a union tax was "unlawful" and, in a newsletter, urged his fellow members not to pay it. After being expelled from the union as a result of these activities, plaintiff filed a Title I suit claiming that his right of free speech had been abridged. In finding the union's actions unjustified, the district court held that even if plaintiff's conduct had violated union rules, such rules, insofar as they precluded dissenting views as to revenue questions, were unreasonable and not within the scope of section 101(a)(2)'s proviso, which allows the adoption of reasonable regulations requiring loyalty to the union.91 While it has been suggested that free speech may be somewhat curbed during the critical moments of contract negotiation, in the

87. 316 F.2d at 451. This is true even where pamphlets are distributed to non-members, including supervisors and the public at large. International Bhd. of Boilermakers v. Rafferty, 348 F.2d 307 (9th Cir. 1965). This is consistent with the announced legislative purpose of the Act to guarantee "freedom of speech not only in a union hall, but outside." Remarks of Senator McClellan, in 105 CONG. REC. 6718 (1959); see Graham v. Soloner, 48 CCH Lab. Cas. c 18,498 (E.D. Pa. 1963). These decisions, of course, in no way immunize union members from civil liability for their statements. 316 F.2d at 451.
89. 339 F.2d 881 (2d Cir. 1965).
absence of the prior adoption and announcement of such a limitation none will be allowed. 92 Thus, aside from basic limitations of parliamentary procedure, 93 section 101(a)(2), for all practical purposes, provides an absolute guarantee of free speech, and the scope of its limiting proviso has been construed so narrowly that it does not weaken its effect. 94 While the full empirical results of the guarantee are yet to be determined, it can be stated that it is doubtful whether any better legislative measures could have been devised.

D. Regulation of Union Dues Procedures

Section 101(a)(3), 95 the least controversial section in Title I, 96 establishes detailed procedural regulations for the increasing of dues and the levying of fees upon members. 97 Whether proceeding by formal referendum or in membership meetings, 98 local unions seeking additional revenue are required to obtain, by secret ballot, 99 a majority vote of their voting members in good standing. 100 International unions, 101 if they choose to proceed by referendum, must also meet the same require-

93. See, e.g., Scoville v. Watson, 338 F.2d 678 (7th Cir. 1964).
94. Perhaps the best postulation as to where the proviso would be applicable is that of Professor Summers:

A member who urged a "wildcast strike" could be expelled by the union for "conduct that would interfere with its performance of its legal or contractual obligation." Urging workers to return to work during a strike probably violates "the responsibility of every member toward the organization as an institution," but advocating that a strike be called off is probably protected even though it weakens the union's will and ability to resist. Joining or supporting a rival union probably can be punished, but organizing an opposition group to work within the processes of the union is within the protected right.

Summers, American Legislation for Union Democracy, 25 MODERN L. Rev. 273, 286-87 (1962); see Deacon v. Operating Eng'r's Local 112, CCH Lab. Cas. ¶ 16,605 (S.D. Cal. 1965). It has in fact been held that a threat of job discrimination by a union in order to prevent members from organizing and seeking a separate local charter for their geographical area constituted a violation of the right of free assembly.

97. No attempt has been made to specify maximum charges. But see 105 Cong. Rec. 6475 (1959).
98. Reasonable notice of the intention to vote upon dues questions must be given to the membership before all such meetings. Brown v. United Bhd. of Carpenters, 52 CCH Lab. Cas. ¶ 16,519 (D. Kan. 1964), rev'd on other grounds, 343 F.2d 872 (10th Cir. 1965); Allen v. Local 92, Iron Workers, 41 CCH Lab. Cas. ¶ 16,697 (N.D. Ala. 1960).
100. Traveling members of international federations, however, are not entitled to vote in local elections concerning "work dues equivalents" imposed on them as a "service charge" for being allowed to work in the local's area. Zentner v. Musicians Local 802, 237 F. Supp. 457 (S.D. N.Y.), aff'd per curiam, 343 F.2d 758 (2d Cir. 1965).
101. The regulations actually apply to all non-local unions.
ments. However, no secret ballot is required where the vote is among convention delegates. Alternatively, if expressly authorized, members of international executive boards may increase dues or levy fees, but their action will be effective only until the next regular convention.

In the one area of possible conflict between these provisions, it has been held that if an international union validly enacts "[a]n across-the-board increase in dues to be paid by its members to its affiliated local unions, [it may] bind its local unions by that action without submitting the question of the dues increase to a referendum of the locals’ members." 105

E. Protection of the Right to Sue

Section 101(a)(4) provides that "no labor organization shall limit the right of any member thereof to institute an action in any court" or before any administrative agency even where the union or its officers "are named as defendants." This right is limited, however, in that "any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four month lapse of time) within such organization before instituting" suit. 108

This granting of a "right to sue," in and of itself, is not significant. Generally speaking, even prior to the LMRDA, there was little support for its absolute denial. On the other hand, it was freely admitted that "freedom of litigation... is hardly so essential a part of the democratic process that the courts should be asked to strike down all hindrances

102. If the convention is a "special" one, "not less than 30 days written notice to the principal office of each local or constituent labor organization entitled to such notice" must be given. 29 U.S.C. § 411(a) (3) (B) (1964).

103. Weighted voting, that is where each delegate votes according to the per capita membership of his unit, is permissible. American Fed’n of Musicians v. Wittstein, 379 U.S. 171, 179 (1964).

104. General grants of "all executive, legislative and judiciary powers" are not a sufficient authorization. King v. Randazzo, 346 F.2d 307 (2d Cir. 1965).


107. It also guarantees the "right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator..." 29 U.S.C. § 411(a)(4) (1964).

108. 29 U.S.C. § 411(a)(4) (1964). A proviso to this section requires that "no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action..." 29 U.S.C. § 411(a)(4) (1964). Designed to check the possibility of employer sponsored union harassment, it has been liberally construed by the courts. Thus the limiting term "interested," which was inserted primarily to enable union members to obtain bank financing for their litigation, 106 Cong. Rec. 6724-25 (1959), has been defined to allow the involvement of other classes of employers as well. Parowitz v. Associated Musicians Local 802, 241 F. Supp. 895 (S.D.N.Y. 1965).
to its pursuit." Thus section 101(a)(4) assumes importance not insofar as it grants a right, but rather because of the manner in which it defines and limits it. In short, the heart of section 101(a)(4) lies in its exhaustion proviso.

1. The Union-Court Question

Unfortunately this exhaustion proviso is more ambiguous than perhaps any other provision in the LMRDA. It does not define its scope and is devoid of any consistent legislative history which might indicate its precise purpose. More specifically, it totally fails to clarify the nature of its relationship to the two distinct exhaustion of remedies limitations which are relevant to union members' civil suits. The first of these limitations derives from union constitutional provisions; the second is an independent judicial doctrine administered pursuant to flexible common law standards. If the proviso is directed only to "union" limitations, unions may require exhaustion for four months while the courts, applying the common law, may independently either require or waive exhaustion during that period and also, when

111. Compare remarks of Senator Kennedy, in 105 CONG. REC. 17899 (1959) with remarks of Senator Cooper, in 105 CONG. REC. 17870 (1959); and remarks of Rep. Griffin, in 105 CONG. REC. 18152 (1959); cf. Cox, Internal Affairs of Labor Unions under the Labor Reform Act of 1959, 58 MICH. L. REV. 819, 841 (1960); O'Donoghue, Protection of a Union Member's Right to Sue under the Landrum-Griffin Act, 14 CATHOLIC U.L. REV. 215, 223-34 (1965). Congress was apparently more concerned with the establishment of specific time limitations for the proviso than it was in clarifying its substantive effects. Thus, for example, the floor debates reflect great fears that the six month amendment of the Kuchel amendment, 105 CONG. REC. 6693 (1959), might effectively deny union members access to the NLRB by reason of section 10(b) of the Taft-Hartley Act which established a six month statute of limitations for the filing of unfair labor practice charges. This use of the relatively short congressional time available for discussion of the proviso was unfortunate since, for all practical purposes, it was generally recognized that "the doctrine of exhaustion of internal remedies [was] simply inapplicable to the Labor Board proceedings or remedies." Remarks of Rep. McCormack, in 105 CONG. REC. 15835 (1959); cf. remarks of Senator Griffin, in 105 CONG. REC. 18152 (1959).

Most commentators have agreed that the exhaustion doctrine, though procedural in format, was and is but a judicial foil to be used in determining substantive results. See articles cited supra. Put another way, they have, with much justification, accused the courts of using the substantive facts before them as a basis upon which to either require or waive exhaustion rather than merely acting on the basis of compliance with procedural requirements.
appropriate, extend it further. On the other hand, if the proviso is interpreted as applying either to the courts or to both the courts and unions, it will, in effect, be "in lieu of the common law" and preclude the requiring of any exhaustion whatsoever after the expiration of four months.

In the interpretative donnybrook which followed the passage of the LMRDA, both conceptual views received academic and judicial support. The "union only" thesis, most strongly urged by Professor Cox, emphasized a literal reading of the statute. Noting that section 101(a)(4) reads "no labor organization" shall limit any member's right to sue in no way referring to the courts — Cox argued that both logic and consistency required that the proviso also be restricted to unions in its application. Furthermore, since the imposition of a four month limitation on the courts would attribute to Congress the intention of modifying state exhaustion laws insofar as Title I rights are enforceable in state courts, he urged that such an interpretation would be unrealistic since "it seems unlikely that Congress would so lightly sweep away state rules of judicial administration." Unfortunately, despite its apparent merit, this view has, until just recently, met with limited judicial success. In the landmark case of *Deyo v.*
American Guild of Variety Artists, the Second Circuit, relying on its interpretation of "statements made on the floor of Congress by the authors of the statute," construed the proviso "to mean that a member of a labor union who attempts to institute proceedings before a court or an administrative agency may be required by that court or agency to exhaust internal remedies of less than four months. . . ."123

This profession of adherence to legislative history is unjustified, and particularly unfortunate, insofar as it leaves the policy considerations upon which it is based unenunciated. The assertion that such an interpretation was necessary "lest it otherwise appear to be Congress' intention to have the right to sue secured by § 101 abrogate the requirement of prior resort to internal procedures"125 as developed in the courts, is difficult to comprehend. The Cox approach would preserve the judicial doctrine of exhaustion by merely reading section 101(a)(4) as unrelated to it.127 Detroy, in its misguided attempt to preserve the principle, emasculated it. Under its analysis, judicial exhaustion is "read into" section 101(a)(4) and branded with a mandatory four month limitation which cannot be extended. This has the effect of obviating the flexibility of the common law doctrine which would otherwise be able to require exhaustion beyond four months. While the immediate practical effects of this limitation have been few, they are disturbing. For example, at least one district court has required exhaustion beyond the four month period where the exhaustion period was marked by delays occasioned by the plaintiff's own conduct.128 The decision is inconsistent with Detroy and is therefore questionable law. The result reached by the district court is preferable, however, and exemplifies the anomalous result that Detroy calls for.

122. 286 F.2d 75 (2d Cir. 1961).
123. Id. at 78.
124. See note 111 supra.
127. In Mamula v. United Steelworkers Local 1211, 414 Pa. 294, 200 A.2d 306 (1964), the Pennsylvania Supreme Court suggested that even though section 101(a)(4) was not directed at the judicial doctrine of exhaustion, its four month proviso might be "adopted" as a guide in the administration of the common law. Such an approach preserves the common law yet remains consistent with the announced congressional intent of establishing some definite termination point for exhaustion requirements. See note 116 supra.
128. By adopting this position, the Detroy court was forced to construe section 101(a)(4)'s exhaustion proviso as applicable to all of Title I. While the court's insistence on reading the proviso as applicable to the judicial doctrine of exhaustion rendered this construction necessary, it is, to say the least, strained. The House of Representatives had previously rejected a provision in section 102 providing for an exhausting of internal remedies for all Title I rights, perhaps from a realization that this was unnecessary because the common law of exhaustion would be left unaffected by Title I. See H.R. 8432, 86th Cong., 1st Sess. (1959).
In view of Detroys emphasis upon the role of the judiciary in the administration of the exhaustion principle, it would appear that it was not legislative history but rather fear of union discipline which prompted the decision. More specifically, it would seem that the court, sceptical of both the vitality and effectiveness of its common law authority, feared that unless it assumed at least concurrent statutory jurisdiction over the exhaustion area it would be precluded from any intervention and unable to effectively check union attempts, based on express statutory authorization, to discourage members' civil suits with threats of internal sanctions. These fears were groundless. The continued vitality of the judicial doctrine of exhaustion had been frequently asserted during the course of congressional debates.\textsuperscript{130} Certainly there was no authority which required its demise. Likewise, though dotted with exceptions, its effectiveness had still met with congressional commendation.\textsuperscript{131} Assuredly it provided no less effective a judicial tool than that currently available under Detroys limited four month period of exhaustion.\textsuperscript{132}

Furthermore, even apart from its common law ability to circumscribe union abuse, it would seem that the court had little to fear in adopting a "union only" analysis. Section 101(a)(4) expressly forbade all union limitations on their members' rights to sue except to the extent authorized in its proviso. Thus instead of forcing the common law into the LMRDA, the court simply could have interpreted the proviso to allow unions to require exhaustion while at the same time retaining enforcement powers for the judiciary.\textsuperscript{133} Under such an interpretation, even assuming the non-existence of an independent common law of exhaustion, courts would still have had control over potential union abuse.

At first glance, there would seem to be little difference between those situations in which a union requires exhaustion and where as now, courts alone do.\textsuperscript{134} In each instance, disciplinary and enforcement powers reside in the courts. Where the courts act to enforce union regula-

\textsuperscript{130} See note 120 supra.


\textsuperscript{132} See pp. 23-25 infra.

\textsuperscript{133} But see Retail Clerks Local 1625 v. Schermerhorn, 375 U.S. 96, 99 (1963).

\textsuperscript{134} Although Detroys does not expressly preclude union regulations, it certainly does so implicitly. Subsequent cases, while likewise not formally prohibiting such requirements, have rendered them nugatory and viewed the rule as strictly "one of judicial administration." Roberts v. NLRB, 350 F.2d 427, 429 (D.C. Cir. 1965); accord, Ryan v. Electrical Workers Local 134, 241 F. Supp. 489 (N.D. Ill. 1965), aff'd, 361 F.2d 942 (7th Cir. 1966). But see Industrial Union of Marine Workers v. NLRB, 379 F.2d 702 (3d Cir. 1967).
tions, however, as opposed to where they are merely administering judicial doctrines, they presumably will be much more reluctant to waive exhaustion lest they undermine the raison d'être of such union regulations. Under this latter approach, therefore, there would be greater encouragement of internal union processes, thus preventing their "atrophy" from lack of exercise. The significance of the preservation of such internal union procedures was, in fact, recently strongly reaffirmed by the Third Circuit in its decision in Industrial Union of Marine Workers v. NLRB. Judge Hastie, writing for the court, rejected the Detroy rationale in its entirety and adopted the views of Professor Cox. Quoting from his concurring opinion in Sheridan v. United Bhd. of Carpenters, Judge Hastie specifically held that section 101(a)(4) means "that a union may not restrict a member's resort to the courts except that it may require that the member first devote not more than four months to reasonable grievance procedures within the organization." Certainly welcome and long overdue in its holding, the significance of this case is difficult to predict. Judge Hastie had expressed himself in this vein previously, however, his views found no judicial support. Whether the addition of Judges Seitz and Body to his camp will prove effectual in this Detroy-dominated area, only time will tell.

In summary, therefore, under either aspect of the "union" analysis, section 101(a)(4) can be read as not affecting the common law of exhaustion, except to the extent that courts "adopt" its four-month limitation as a working guideline. Judicial discretion would be maintained and constructional inconsistencies avoided. Under Detroy's "court" approach, however, by drawing the common law through section 101(a)(4), union limitations have been rendered nugatory and, outside of four-month periods, judicial discretion eliminated.

2. Judicial Administration Within the Four Month Barrier

Even under Detroy's limited view of the judicial doctrine of exhaustion which prevents a court from requiring exhaustion after the

136. 379 F.2d 702 (3d Cir. 1967).
137. See pp. 19-20 supra.
138. 306 F.2d 152 (3d Cir. 1962).
139. 379 F.2d at 708.
140. More precisely, this interpretation represents an alternative holding on the part of the court.
141. The "union analysis" includes both the union regulation-union enforcement and union regulation-court enforcement approaches.
142. See note 127 supra.
143. See note 134 supra.
four month period, there is still a four month period in which it is actively operative as a discretionary device enabling the court to take jurisdiction prior to the expiration of the four month period, even if there has not in fact been exhaustion. In the establishment of standards for the exercise of this discretionary power, federal courts have been forced to create new "federal law" which, while borrowing heavily from the prior common law, is at least pro forma distinct from it. Thus under Detroy "where the internal union remedy is uncertain and has not been specifically brought to the attention of the disciplined party, the violation of federal law clear and undisputed, and the injury to the union member immediate and difficult to compensate by means of a subsequent money award, exhaustion of remedies ought not to be required."

While Detroy indicated that the presence of all these factors might be necessary to waive exhaustion, subsequent courts have been less strict in their requirements and have shown themselves to be amenable to common law influence. They have therefore generally granted relief after finding just one of these factors present.

Under the common law, no exhaustion could be required where there were no internal union remedies available. Analogously related to this obvious principle is the "federal law" rule that no exhaustion is required where there is no "certain" remedy. For example, where a union member was placed on an "unfair" list for refusing to comply with an arbitration award, his union's constitution contained no provisions dealing with appeals from such a listing, and his union never specifically notified him that any relief was available, the degree of certainty comprehended by the federal rule would be lacking. In the absence of either a clear remedy or notice as to those of a more obscure nature, the court waived the requirement of exhaustion. While there certainly is no requirement that union constitutions delineate a specific

144. Some early courts read section 101 (a) (4) as requiring mandatory exhaustion in all cases. See, e.g., Mendez v. District Council for Ports, 208 F. Supp. 917 (D.P.R. 1962); Detroy v. American Guild of Variety Artists, 189 F. Supp. 573 (S.D.N.Y. 1960); Smith v. General Truck Drivers Local 467, 181 F. Supp. 14 (S.D. Cal. 1960). However, it is now generally accepted that exhaustion "may be required," but not necessarily so. Detroy v. American Guild of Variety Artists, 286 F.2d 75, 78 (2d Cir. 1961).


146. Annots., supra note 113.

147. See Detroy v. American Guild of Variety Artists, 286 F.2d 75 (2d Cir. 1961).

remedy for every possible offense, the burden of proof is on the union to demonstrate its clear availability.

Although the relevance of a "clear violation of federal law" in creating an exhaustion "exception" has been challenged on the grounds that "it is all the more imperative" that a union be allowed to "put its own house in order... where the violation is clear," the courts have refused to abandon this rule. The clearer the violation, the less reason there is for judicial hesitation. "[T]he commitment of judicial resources is not great; the risk of misconstruing procedures unfamiliar to the court is slight; [and]... a sufficient remedy given by the union tribunal would have to approximate that offered by the court." In short, where the course is clear, the courts have found it to be of little significance who pursues it.

Where it is obvious that a union's internal remedies, although available, are futile, the courts have refused to require their exhaustion. A perfunctory exercise of formal rights by a union member will effect no positive results and, on the contrary, may prove quite damaging to him. In Farowitz v. Associated Musicians Local 802, for example, plaintiff was not required to exhaust his remedies because the union admittedly considered him an "exceptional threat" to its operations and had treated him severely before, because he was bitterly and outspokenly hated by a member of the union's appeals board, and because the union had adamantly assumed a fixed position on the dues issue out of which plaintiff's case arose.

On the other hand, a mere unsubstantiated allegation of bias or futility will ordinarily not suffice; there must be some "actual resort to

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149. In Denov v. Davis, 51 CCH Lab. Cas. ¶ 19,449 (N.D. Ill. 1964), dismissed on merits, 54 CCH Lab. Cas. ¶ 11,421 (N.D. Ill. 1966), where plaintiffs challenged the legality of a union tax assessment which their local had found valid, a provision in the International's Constitution providing that members might appeal "any decision, of whatever kind, of a Local or any other authority" was held sufficient to require intra-union exhaustion. Id. at 32,983.


152. This exception is quite similar to the common law's "void" concept. See, e.g., Tesoriero v. Miller, 274 App. Div. 670, 88 N.Y.S.2d 87 (1949).


154. Cf. Hopkins v. Daley, 52 CCH Lab. Cas. ¶ 16,543 (S.D.N.Y. 1965), where plaintiff, a union officer, moved for an order reinstating him as president of his local union. The court found that "the violation of the federal law was not clear" and refused to waive exhaustion. Id. at 23,194.


156. In Calagoz v. Calhoon, 309 F.2d 248 (5th Cir. 1962), the court stated: "The plaintiffs are not compelled to exhaust the internal remedies of their union when their appeal would have to be made to the very officers against whom their complaint is directed." Id. at 260. See also Steele v. Louisville & Nashville R.R. Co., 323 U.S. 192 (1944); Caraballo v. Union de Operadores, 49 CCH Lab. Cas. ¶ 18,784 (D.P.R. 1964).
such procedures." 157 A flat refusal to exercise reasonable procedures will result in an exhaustion-based dismissal. 158 Furthermore, there need be no guarantee of obtaining a final decision within the four month period.

As long as there is likelihood that some decision will be forthcoming within the four-month period and the aggrieved member has not shown that he will be harmed by being required to seek such a decision . . . the purposes of the Act require that judicial intervention be withheld until the member has given the internal grievance procedures the chance to operate which Congress has deemed to be reasonable. 159

Thus unless it is patently clear that a plaintiff will be unable to find adequate internal relief because of improperly constituted appeal boards, open hostility towards him, or an inability to obtain any appellate decision within four months, he will not be allowed to escape his exhaustion requirement on the basis of a claim of "futility."

Finally, where a plaintiff will suffer irreparable harm by being forced to exercise his union remedies, courts will not require exhaustion. Although this "exception" generally assumes only dependent significance and is extremely narrow in scope, 160 in certain cases it may independently provide a basis for waiving exhaustion — or the granting of a temporary injunction. This is particularly true where a member has been suspended or expelled and, as a result, is suffering damages which will be difficult to compensate with money — either because of the uncertainty of measuring damages 161 or the general ineffectiveness of a money award. 162


158. In Armondo v. Urbach, 236 F. Supp. 317 (S.D.N.Y. 1966), where plaintiffs were accused by their union of distributing false statements concerning a proposed merger, their allegations of futility were "negatived" by the Executive Board's dismissal of the charges against three of their group who had exercised internal remedies.


160. For example, in Acevedo v. Bookbinders Local 25, 196 F. Supp. 308 (S.D.N.Y. 1961), the court held that a mere "temporary continuance of a deprivation of" full voting rights did not constitute irreparable harm.

161. Where "eventual reinstatement and full back pay" are available, a plaintiff is obliged to make a strong showing that irreparable harm will result if he is not afforded immediate relief. See Hopkins v. Daley, 52 CCH Lab. Cas. ¶ 16,543, at 23,195 (S.D.N.Y. 1965).

162. In Gartner v. Soloner, 220 F. Supp. 115 (E.D. Pa. 1963), where plaintiff was fined and suspended from membership in violation of 29 U.S.C. § 411(a)(2) (1964), his suspension was enjoined since the court found that plaintiff's right to participate in impending shop contract negotiations would be irreparably harmed unless immediate relief were given. Cf. Parks v. International Bhd. of Elec. Workers, 314 F.2d 880 (4th Cir. 1963).
On the whole, therefore, even under Destroy, the judicial exhaustion principle has been developing on an ad hoc basis with little change from the common law except for the imposition of a four-month limitation as the outside measure of its application. Whatever its intended goals, Destroy would seem to have done little except to circumscribe the courts and encourage the atrophy of internal union remedies. For, where union members are at all unsure of their chances before their peers, they have little reason to pursue their internal remedies energetically since they are aware that within four months, full and impartial civil relief will be automatically available to them.

F. Safeguards Against Improper Disciplinary Action

Section 101(a)(5) provides that "[n]o member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for non-payment of dues . . . unless such member has been (A) served with specific written charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing." Notably brief in its format, this provision was chosen over several more detailed versions because of its flexibility. Aside from the theoretical justification which it provides for judicial intervention, however, it "adds nothing to the standard of fair procedure long enforced by the courts." Therefore, although this justification has had the salutary effect of rendering the courts more aggressive in their administration of fair standards, section 101(a)(5) itself has done little to correct the source of most disciplinary malfeasance, the union trial board. It in no way requires, for example, the use of non-union members as judges.

1. The "Otherwise Disciplined" Limitation

In order for section 101(a)(5)'s guarantees to become applicable, a union member must be either fined, suspended, expelled, or "otherwise disciplined." The first three instances are obvious, but the latter

165. See Aaron, supra note 135, at 873.
has given rise to a substantial body of interpretative case law which can be categorized according to whether the union activity involved has affected members' employment or membership itself.

In *Detroy v. American Guild of Variety Artists*, plaintiff was placed on a "national unfair list" for failing to comply with an arbitration award and, as a result, lost several job opportunities. The court found that the union's indirect enforcement of the arbitration award was in its own interests and therefore constituted "discipline" within the meaning of section 101(a)(5). On the other hand, in *Figueroa v. National Maritime Union*, the defendant union refused to refer plaintiffs for work since, as convicted drug offenders, they were ineligible under the terms of the collective bargaining contract which bound the union. In dismissing plaintiffs' complaint the court held that it was clear that "the Union's conduct did not amount to 'discipline'" since it was pursuant to the terms of a collective bargaining agreement.

There seems to be little reason for this difference in result. In each case the union was seeking to compel its members to comply with the terms of employment for which they had either directly or indirectly contracted. In each instance the members admitted their contract violations. If for no other reason than the peculiar nature of its industry, the American Guild of Variety Artists had just as valid an interest in ensuring the continued satisfaction of its employers as did the National Maritime Union, the fact that it was not a direct obligor on Detroy's contract notwithstanding. In each case, therefore, the combination of an admitted violation and a valid union interest in enforcement should have precluded the need for requiring section 101(a)(5) procedures.

In *Scovile v. Watson*, where a union passed a bylaw stating that it would not process for arbitration any claim made by a member guilty of excessive absenteeism, the court held that the application of this bylaw to plaintiff was not "discipline," since, when passed, it was

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170. This area is, of course, closely related to the NLRB's section 8(b)(2) jurisdiction and creates difficult pre-emption problems. See note 29 supra.

171. 286 F.2d 75 (2d Cir. 1961).

172. 342 F.2d 400 (2d Cir. 1964). The court stated, however, that if plaintiffs had denied their convictions, a factual hearing in accordance with section 101(a)(5) would have been required.


174. In *Figueroa*, plaintiffs admitted that they had been convicted of drug offenses; in *Detroy*, plaintiff, by failing to appeal from his arbitration judgment, had acquiesced in it as a matter of law.

175. 338 F.2d 678 (7th Cir. 1964).
prospective and applied to all members. However, in Parks v. International Bhd. of Elec. Workers,\textsuperscript{176} where defendant's international president revoked the charter of a local, it was held that the revocation, although directed at the local, so affected the membership as to constitute discipline against the members.\textsuperscript{177} Union action that affects a whole group rather than a specific individual, therefore, does not necessarily excuse the necessity for due process under section 101(a)(5).

2. \textit{Procedural Due Process}

Once discipline has been administered,\textsuperscript{178} it then becomes the function of the courts to determine whether or not section 101(a)(5)'s requisite safeguards have been complied with. Initially, of course, an accused member must have been served with "written specific charges,"\textsuperscript{179} and a mere reference to a particular section of a union's constitution without any statement of the facts involved is insufficient.\textsuperscript{180} This requirement is absolute and "an \textit{ex post facto} showing of knowledge by oral testimony" will not suffice.\textsuperscript{181} There is, furthermore, no requirement that an accused member seek such notice; however, if he does so successfully within a reasonable time prior to his trial, the requirement of the statute is satisfied.\textsuperscript{182}

In determining what is a "reasonable" time to prepare a defense, the courts have necessarily proceeded on an ad hoc basis. Twenty-one days before trial has been found acceptable,\textsuperscript{183} eight days has not.\textsuperscript{184} The short of it is that the issue will depend upon the complexity and gravity of the charges, the adequacy of the original notice, as well as any other factors which might justify a particularly prompt adjudication.

Questions of notice aside, the essence of section 101(a)(5), insofar as the courts are concerned, lies in its guarantee of a "full and fair hearing."\textsuperscript{185} This, at a minimum, requires "an unbiased and dis-
interested tribunal." It does not require that a member have an attorney present, although he is entitled both to confront his accusers and to cross examine witnesses. He may waive these rights, however, if he fails, without justification, to attend the trial.

Since substantially all proof of impropriety must come from the trial record itself, much of the litigation in this area has concerned itself with the proper scope of judicial review. While all courts recognize that broad discretion rests with union trial boards in the admission of evidence, they have, nevertheless, not hesitated to examine findings according to the same test applied by appellate courts in passing upon the sufficiency of evidence to support the judgment of trial courts. At least one court has apparently gone even further and, while eschewing reevaluations of credibility or the weighing of evidence, has stated that "a close reading of the record is justified to insure that the findings are not without any foundation. ..." Thus, although it is certain that courts will not accept union findings as a matter of course, it is uncertain precisely what their scope of review will be.

Section 101(a)(5) provides quite adequate prima facie secondary checks upon the maladministration of union discipline. It would seem, however, that by failing to deal in the first instance with the problem of inherent bias resultant from the union practice of combining prosecuting and judicial functions in a single trial board, it has not proven to be a significant refinement of the common law. An ounce of prevention may well be worth a pound of cure, but the LMRDA has contented itself with administering relatively standard dosages of the latter.

188. Anderson v. United Bhd. of Carpenters, 47 CCH Lab. Cas. ¶ 18,400 (D. Minn. 1963).
193. In Leonard v. M.I.T. Employees' Union, 225 F. Supp. 937 (D. Mass. 1964), however, the court set aside a union decision because it was not supported by "substantial evidence."
194. In Leonard v. M.I.T. Employees' Union, 225 F. Supp. 937 (D. Mass. 1964), however, the court set aside a union decision because it was not supported by "substantial evidence."

IV. TITLE IV: UNION ELECTIONS

Regardless of the substantive guarantees contained in Title I’s “Bill of Rights,” the viability of union democracy is, as a matter of practical administration, primarily dependent upon the attitudes and effectiveness of union officers. As the elected representatives of the rank and file, officers govern, conjointly with management, the full spectrum of their electors’ industrial lives. It requires little argument, therefore, “to demonstrate the importance of free and democratic union elections” in establishing in these positions men attuned to the “freely expressed will of the members.” For without the benefit of such a rapport, in the long run, union leaders can “have little prestige or effectiveness.” Members, with little reason or occasion to actively participate in union affairs, become apathetic; the officers themselves, with disturbing frequency, tend to conform to Lord Acton’s famed maxim of power. In short, unionism stagnates. Not surprisingly, therefore, in 1958, the McClellan Committee, after uncovering detailed instances of union dictatorship and official self-aggrandizement, recommended the passage of federal legislation requiring both periodic elections and the use of the secret ballot. After considerable reworking, these recommendations were eventually incorporated into Title IV of the LMRDA which prescribes minimum standards for the full range of union electoral procedures.

204. For a summary of the legislative history see Mamula v. United Steelworkers, 304 F.2d 108, 109-12 (3d Cir. 1962).
206. While unions are free to establish stricter standards if they wish, states may not, since “it would be confusing, unduly burdensome, and often impossible for [unions] to comply with a variety of election laws.” S. Rep. No. 187, 86th Cong., 1st Sess. 22 (1959).
207. This “range” has been aptly described as a “series of processes which may begin with the naming of an election committee and move by successive stages through nominating procedures, campaign activities, balloting, and finally end with a tabulation of the votes.” Summers, supra note 197, at 1224.
A. Substantive Regulations under Title IV

Written in a rambling narrative style, Title IV's guarantees can be divided into three basic areas. These deal with election procedures, voters, and candidates. While these categories are not mutually exclusive, they do provide a convenient foundation upon which to base an analysis of the title's mechanics.

1. Procedural Regulations

With the exception of federations, all labor organizations must elect their officers at specified time intervals which vary according to the nature of the organization. Notice of all such elections must be mailed, at least fifteen days beforehand, to each member in good standing at his last known home address. Furthermore, with one partial exception, the use of a secret ballot is required in all instances.

The requirement of a secret ballot, probably the most significant procedural innovation of the LMRDA, makes mandatory what has

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208. Federations of national or international unions, like the AFL-CIO, are expressly excluded from coverage under Title IV. 29 U.S.C. § 481(a) (1964).

209. "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice-president, secretary, treasurer, or other executive function of a labor organization, and any member of its executive board or similar governing body." 29 U.S.C. § 402(n) (1964). Business agents or representatives generally fall within this definition; shop stewards do not. U.S. DEP'T OF LABOR, TECHNICAL ASSISTANCE AID No. 5, ELECTING UNION OFFICERS (1964). In determining whether or not a position is an office, "decisions . . . will require a practical judgment. . . . The name or title that the labor organization assigns to the position will not be controlling." 29 C.F.R. § 452.4(d) (1967). Where the issue is disputed, 28 U.S.C. § 1337 (1967), may provide federal jurisdiction for a private civil enforcement suit. Although this position is inconsistent with the narrow spirit of Calhoon v. Harvey, 379 U.S. 134 (1964), it is technically valid since it is confined to those situations where the alleged violation does "not arise out of a pre- or post-election challenge in the usual sense." McKeon v. Local 107, Teamsters, 223 F. Supp. 341, 344 (D. Del. 1963).

210. National or international unions must elect their officers "not less often than once every five years"; locals, "every three years"; and intermediate bodies, "every four years." 29 U.S.C. § 481(a), (b), (d) (1964). Although not a definitive test, a national or international union may generally be distinguished from a local in that the latter has no chartered subordinate bodies. An intermediate body, on the other hand, may be subordinate to a national or international union, but cannot be a local. "Included within this category is any conference, general committee, joint or system board, or joint council" with the exception of "State or local central bodies." 29 C.F.R. § 451.4–5 (1967).

211. 29 U.S.C. § 481(e) (1964). Hand delivery will not suffice. U.S. DEP'T OF LABOR, supra note 209. Some savings may be effected, however, by the mailing of ballots themselves as election notices, an authorized procedure so long as it is timely done (15 days prior to the election). Similarly, publication of notice in a union newspaper which is mailed to all members is sufficient provided that the notice is reasonably conspicuous in the context of the paper. Id.

212. An international union may choose its officers by an open vote of convention delegates; however, the delegates themselves must be chosen by secret ballot. 29 U.S.C. § 481(a) (1964). The open convention vote was prompted by the congressional desire to permit union members to determine the extent to which their elected delegates complied with instructions. A similar indirect procedure is likewise available to intermediate bodies. 29 U.S.C. § 481(e) (1964).
been universally recognized as the "sine qua non of a free election." 214
Unfortunately, however, as defined in the Act, 215 it has undergone a very literal construction inconsistent with its basic purpose. For example, in Wirtz v. Local 11, Hod Carriers, 216 ballots were numbered "1" to "1,000", of which some 478 were actually used. As each ballot was distributed by the judges of election, the financial secretary stamped the membership dues ledger, with no ballot being issued to any member in arrears. At the same time a "watcher" for the insurgent candidates recorded "by name or dues book number" 217 the identity of each voter in the same numerical order as the ballots. Although there was thereby created a two-fold possibility for voter identification, that is by comparing ballot numbers with either the incumbent's dues registrar or with the insurgent's voter list, the court found that the dues list had not been so marked as to enable anyone to correlate it with votes cast and that the possibility of the insurgents obtaining such information had been precluded by their failure to ever obtain custody of the ballots. In short, "[s]o far as the conduct of the election was concerned the votes of the members were, in fact, secret." 218 Significantly, the court also found that there was no evidence whatsoever "that the members thought their votes could be detected." 219

While the court's decision is probably sound on the basis of this latter finding of fact, the language, insofar as it stresses the importance of de facto identification, hamstrings the application of the Act. Of equal importance with the actual preservation of secrecy is the atmosphere of integrity which must surround the electoral process in order to guarantee full voluntariness. Reasonable fear of identification can have as devastating an effect on an election as identification itself. It is submitted, therefore, that wherever a reasonable possibility for electoral abuse exists in the union election procedure, and this fact is known by the electorate, a new election should be ordered notwithstanding the fact that the potential abuse never became an actuality.

A rather high hurdle is posed for any individual or group challenging the secrecy of a ballot since, in order to obtain judicial relief, a

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215. "‘Secret ballot’ means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election . . . which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed." 29 U.S.C. § 402(k) (1964).
217. Id. at 412.
218. Id. at 412-13.
219. Id. at 413. Not one of the twenty-six members who protested the election to the International Hod Carriers Union "complained that any voter's choice was influenced" by any fear of their identification. Id. This factor was apparently dismissed by Professor Beaird. Beaird, supra note 214, at 1312.
showing must be made that the alleged violation "may have affected" the result of the election in question.220

To adequately demonstrate the requisite effect, a union member must testify as to how he voted, yet this results in destroying the secrecy of the ballot — the purpose of the Act. Moreover, such information could not be elicited from an unwilling witness since it is privileged matter.221 While the Act's express requirement of "effect" probably precludes the possibility of abandoning such disclosure altogether,222 it would seem to be a sound solution to place the burden of proof as to non-violation on the unions themselves since it is they who have created the problem in the first instance.223 Such a procedure, which has met with approval in dealing with candidate exclusions,224 would necessarily act as an inducement towards the establishment of refined voting techniques225 while, in the interim, fully protecting the rights of individual union members.

Although violations of proper procedures seldom occur during the actual conduct of an election,226 Title IV nevertheless provides for certain safeguards designed to guarantee the continuance of this situation. Therefore, each candidate is entitled to have an observer at the counting of the ballots as well as at the polls.227 Furthermore, the "votes cast by members of each local labor organization shall be counted, and the results published, separately."228 In all cases, to insure adequate investigative records when claims of misconduct are made, unions are required to preserve the ballots used for a period of one year.229

220. See pp. 50-52 infra.
221. UNIFORM RULE OF EVIDENCE 31; MODEL CODE OF EVIDENCE 225 (1942); 8 J. WIGMORE, EVIDENCE §§ 2214(b)(b) (McNaughton rev. ed. 1961); see Annot., 90 A.L.R. 1362 (1934).
222. But see Beard, supra note 214, at 1312.
223. Obviously if there are no feasible means of ascertaining voter identity, any claims of fear and influence should carry little weight. See Wayfield v. Babcock, 47 CCH Lab. Cas. ¶ 18,375 (E.D.N.Y. 1963). As to this issue, the burden of proof definitely should be on the plaintiff.
224. See pp. 51-52 infra.
225. This inducement is particularly desirable in the administration of absentee balloting. For, although there is no right as such whereby union members may demand an absentee vote, the courts will generally require it if otherwise there will be a substantial disfranchisement of the membership. Goldberg v. Marine Cooks Union, 204 F. Supp. 844 (S.D. Cal. 1962). But see Wirtz v. Local 169, Hod Carriers, 52 CCH Lab. Cas. ¶ 18,752 (D. Nev. 1965). This requirement, coupled with the Act's prohibition of the use of proxies, has caused mail voting — with all the problems inherent in such a procedure — to be the most popular alternative means of tabulation. Jenkins, supra note 199, at 178-79.
226. Summers, supra note 197, at 1223.
227. 29 U.S.C. § 481(c) (1964). While substitute observers may be freely used, unless the union's constitution or by-laws provide to the contrary, no more than one may be present at any given time. U.S. Dep't of Labor Release, BLMR-41/USDL-No. 4,438 (March 14, 1961).
229. Likewise, if the election is an open one at a union convention, the delegates' credentials must be preserved. The duty of preservation, whether it be with regard to ballots or credentials, falls upon the secretary of the union unless another official is named. 29 U.S.C. § 481(e)-(f) (1964).
Under Title IV, therefore, union members are guaranteed full notice of all elections as well as "fair play" when they are conducted. While far from radical in its concepts, it is procedurally significant both in the formal recognition of the importance of the union electoral process as well as in the codified base which it provides to control potential abuses.

2. The Right to Nominate and Vote

The statutory guarantee provided by Title IV is quite specific in its guarantee of these crucial rights.

In any election required by this section [Title IV] which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall . . . have the right to vote for or otherwise support the . . . candidates of his choice. . . . Each member . . . shall be entitled to one vote.230

In defining the requirement of "a reasonable opportunity" to nominate, the courts have found themselves so deeply enmeshed both in the Title I–Title IV jurisdictional web, and in defining the right to vote, that they have frequently given a cursory analysis to the highly significant substantive right to nominate.231 Thus, most of the interpretative materials currently extant are of administrative derivation. Regardless, it is clear that a labor organization "must give reasonable notice of the offices to be filled by the election and of the time, place, and form of submitting nominations."232 Furthermore, this requirement of notice applies to all steps of the nominating process, including required declarations of candidacy where permissible.233

While the right to nominate is not absolute,234 it cannot be arbitrarily restricted, for example, by allowing nominations only by mem-

232. 29 C.F.R. § 452.8 (1967). "The Act does not prohibit the use of a single notice for both nominations and elections. Such joint notice, however, must be given in sufficient time to permit reasonable opportunity for members to nominate candidates and must also meet the requirements for election notices." U.S. DEP'T OF LABOR, TECHNICAL ASSISTANCE AID No. 5, ELECTING UNION OFFICERS (1960). This latter requirement has particular application in determining how notice is to be effected since nomination notices, unlike election notices which must be mailed, allow for the use of any reasonable means in accord with the constitution and by-laws of the union.
233. Wirtz v. Local 30, Operating Eng'rs, 242 F. Supp. 631 (S.D.N.Y. 1965) (declaration requirement held invalid as being used solely to paralyze opposition).
bers of a board of directors. In the same context, it is obvious that although the secret ballot requirements of the Act do not apply to the right of nomination, its free exercise is expressly protected from "penalty, discipline, or improper interference..." However, the right to nominate, while potentially broad in scope, has yet to be precisely defined because it has suffered from a lack of ad hoc contexts in which it could be. This in no way detracts from the value of the right but rather emphasizes its flexible potential in future litigation.

The right to vote, or more accurately, its exercise, is the substance of which elections are made. The bulk of Title IV, as well as much of Title I, is directed in one way or another towards refining it into a tool of responsible voluntarism. Granted to "every member in good standing," it, like the right to nominate, is subject to reasonable union regulation. Although Title IV itself does not authorize such restrictions and indeed defines the right in absolute terms, the Department of Labor, citing section 101(a) of Title I which does speak in terms of "reasonable rules and regulations" regarding voting, has held the imposition of restrictions to be valid. This interpretation is undoubtedly justified, for otherwise, unions would be either stripped of all control over their own elections or else be forced to develop an artificial membership structure in order to achieve internal election processes. In view of the congressional goal of union democracy, neither presents a particularly satisfactory alternative.

What is "reasonable" is again, with one specific administrative exception, left to the courts for their ad hoc development. Although most of the litigation involving this right has thus far taken place in the context of Title I, there has been one significant case under Title IV. In Goldberg v. Marine Cooks Union, the Secretary of Labor charged that the defendant union, in violation of the Act, was creating special classes of non-voting members since it refused to

238. 29 U.S.C. § 481(e) (1964). See also note 14 supra.
239. 29 C.F.R. § 452.10(a) (1967).
240. Unions may, "in appropriate circumstances, defer eligibility to vote by requiring a reasonable period of prior membership, such as 6 months or a year, or by requiring apprentice members to complete their apprenticeship training, as a condition of voting." 29 C.F.R. § 452.10(a) (1967).
241. Certain specific rules do exist, however, with regard to the administration of financial prerequisites for voting qualification where the check-off system is employed. See note 252 infra.
242. See pp. 11-13 supra.
244. See note 240 supra.
allow some 1200 non-"full book" members to vote for officers even though they did have job seniority and were charged "service fees" for their job referrals. The Secretary contended that under the union constitution which provided that "[m]embership classification shall correspond to and depend upon seniority classifications" and under the Hughes definition of LMRDA "membership," the non-"full book" employees were "members" and entitled to vote. Although intimating dissatisfaction with the union's "unnecessarily long" probationary period for full membership, the court held that "the peculiar circumstances under which men ship at sea are such as to warrant the imposition of conditions which assure stability of employment over a period of time." Eschewing responsibility, it found that "it is not for this tribunal to impose its concept of a proper period upon the union," and ruled that the complainants were members neither under the union constitution nor under the LMRDA.

It is certainly not the duty of a court, in the first instance, to impose its "concept" of a time limitation on a union franchise. However, where a union's program is designed to create consistently large, long-term classes of non-voters, as in Goldberg, then by default it does become the function of the court to protect those thereby excluded. Linguistic artistry, while valuable to a court in skirting the substance of difficult issues, provides no stimulus for the growth of union democracy. Certainly "so long as [unions] in reaching [their] decisions violate no provisions of law . . . judges should resolutely keep [their] hands off." Here, however, the essential violation by the Marine Union was patent, and the court's action, therefore, an abdication of responsibility.

In short, in view of the importance which Congress has attached to the encouragement of union democracy and the function of union elections as a means thereto, it would seem that courts should not hesitate to actively intervene in instances of relatively obvious disfranchisement.

245. To become a "full-book" member, it was necessary to swear an "oath of obligation," pay a 150 dollar initiation fee, and serve a rather lengthy period of shipping time, generally from five to six years.
246. See p. 4 supra.
247. 204 F. Supp. at 845.
248. Id.
250. See, e.g., Acevedo v. Bookbinders Local 25, 196 F. Supp. 308, 312 (S.D.N.Y. 1961), where the court indicated that it would be unreasonable to correlate voting rights with job skills. See also Wirtz v. Trico Workers Union, Civil No. 9374 (W.D.N.Y. filed Sept. 25, 1961) (union, because of external pressures, relented in opposing the rights of members on lay-off status to vote); Wirtz v. Office Employees Ass'n, 52 CCH Lab. Cas. ¶ 16,629 (N.D. Ind. 1965).
should assume an aggressive posture; it is here, in the long run, that the success or failure of the LMRDA will be measured.

3. The Right to Candidacy

The operative section of the Landrum-Griffin Act controlling candidacy provides:

[E]very member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed). No member whose dues [have been collected under a check-off system administered pursuant to a collective bargaining agreement] shall be declared ineligible to . . . be a candidate for office . . . by reason of alleged delay or default in the payment of dues.

a. Section 504. — No person who has been convicted of or imprisoned as a result of his conviction of certain specified common law crimes or any violations of Titles II and III shall serve as a union officer for five years thereafter under the provisions of section 504 of Title IV. Although conceived and drafted with undisputed good purpose, this section has been subjected to severe criticism because of its administrative dependence upon state criminal law. For example, any individual convicted of grand larceny is covered by the section's proscription, yet "grand larceny" itself may vary, insofar as its minimal required amount is concerned, from five dollars to five hundred dollars. The potential for jurisdictional inequity here is obvious and similar problems exist with regard to almost all of the other crimes listed. By the same token, certain other offenses, equally reprehensible, by reason of their non-listing carry no disqualification whatsoever.

251. "Member in good standing" is defined in 29 U.S.C. § 402(o) (1964); see pp. 3-4 supra.
252. 29 U.S.C. § 481(e) (1964). The provision dealing with non-disqualification of candidates because of tardy transmissions of check-off dues also forbids restricting the right to vote. Id. Because most litigation concerning this provision has dealt with the right of candidacy, it is discussed here rather than in connection with the right to vote. See pp. 35-36 supra.
253. These include: "robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury...." 29 U.S.C. § 504(a) (1964).
254. Certain exceptions are made for persons who have been pardoned or granted an exemption by the Board of Parole of the Department of Justice. 29 U.S.C. § 504(a) (2) (B) (1964).
258. Jenkins v. Teamster President, supra note 18, at 162-163.
Section 504, therefore, despite its abstract appeal, has decided practical limitations.\footnote{259}

\textit{b. "Reasonable Regulations Uniformly Imposed."} — The question of whether a particular union's candidacy qualification standards are reasonable is obviously one which, in the last analysis, must be determined on an ad hoc basis.\footnote{260} But while no qualification has therefore a per se acceptability, certain general guidelines may nevertheless be drawn. Initially it would seem that no regulation whatsoever should be allowed unless "the needs or necessities of the . . . union" require it.\footnote{261} A democracy, by its nature, functions best when unimpeded by unnecessary and potentially corruptive restrictions on its process of leadership selection. It would seem that unions have more to lose by enabling entrenched incumbents to perpetuate themselves than by creating the slim chance that an unqualified candidate might achieve office.\footnote{262} In determining "necessity," the practices of other unions are obviously relevant. Common sense dictates the conclusion that a restriction is unnecessary if substantially all other unions are able to work without it, while logically the converse would also hold true.\footnote{263} In either instance, however, the effects of a restriction must be evaluated in the context of the particular union involved, especially in the latter case if general disqualification results.\footnote{264}

More specifically, for example, the abstract right of a union to demand compliance with its financial levies as a condition precedent to the exercise of a right of candidacy is clear.\footnote{265} But if, for example, a union required each candidate to have paid his quarterly dues prior to their due date in every quarter during the year preceding an election, the regulation, though seemingly innocuous, might well be "unreasonable" if it failed to provide for a "grace" period and had the effect of arbitrarily excluding the vast majority of the membership from eligi-
bility.266 Similar yet more complex problems are likewise created when a union utilizes a check-off method of collection. In Wirtz v. Local 191, Teamsters,267 where a union disqualified a member as a candidate because of his late payment of dues even though he thought in good faith that his dues were paid and, in fact, they would have been except for irregular employer check-off practices acquiesced in by the union, the disqualification was found to be in violation of section 401(e).268 Where, however, dues were not checked off because the employees had earned no wages from which they could be deducted, the employees’ failure to satisfy their obligations personally was held to provide a justifiable basis for their disqualification.269

Other than dues restrictions, the most commonly imposed prerequisite for candidate eligibility is minimal attendance at union meetings. Thus, where a union required seventy-five per cent attendance at its regular meetings for a two year period preceding an election, and allowed excuses only for work conflicts, it was held unreasonable since it resulted in only two and two-tenths per cent of the membership being eligible.270 On the other hand, a rule requiring attendance at one meeting in each of the five quarters preceding the election was held to be “almost the minimum attendance requirement” and obviously reasonable.271

Deferred eligibility for new or transfer members is also permissible, although these classifications cannot become permanent.272 Likewise it would seem that service in lower offices could be required as a prerequisite to holding an office which required particular administrative expertise.273 And although the scope of section 504274 is currently somewhat in doubt, it is certain that union rules prohibiting either Communists275 or persons convicted of crimes “involving moral turpitude offensive to trade union morality” from running for office are valid.276 Required declarations of candidacy several months in advance of the actual electoral process have, however, been found to serve “no

266. Wirtz v. Local 9, Operating Eng’rs, 51 CCH Lab. Cas. ¶ 19,579 (D. Colo. 1965), aff’d, 54 CCH Lab. Cas. ¶ 11,489 (10th Cir. 1966).
272. ELECTING UNION OFFICERS, supra note 209. For a discussion of the same principle in relation to the right to vote, see pp. 11-13, 35-36 supra.
273. But see Wirtz v. Office Employees Ass’n, 52 CCH Lab. Cas. ¶ 16,629 (N.D. Ind. 1965).
276. Coburn v. Operating Eng’rs Local 9, 46 CCH Lab. Cas. ¶ 18,520 (N.D. Cal. 1963).
reasonable purpose" and to constitute merely an instrument to paralyze opposition forces.\textsuperscript{277}

In summary, the purpose of any judicial evaluation of union candidacy restrictions is to determine whether there is a relevant union basis for the requirement,\textsuperscript{278} and if so, to ascertain the substantive effect which it has upon the membership as a whole. In this regard it can be safely said that any such requirement, regardless of its relevance, which results in substantial numerical ineligibility will, perforce, come under extremely close scrutiny.

4. Candidate Rights

By becoming a "candidate" in any Title IV election, a member in good standing acquires certain rights designed to effectuate the operation of his campaign. Initially he can require the union to comply with all of his "reasonable requests . . . to distribute [campaign literature] by mail or otherwise" at his expense.\textsuperscript{279} What is reasonable will, of course, depend upon "not only the time, place, and nature of the request but also to whom it is made and the ability of that person to comply with the request."\textsuperscript{280} For although a literal reading of section 401(c) would seem to indicate that a request to "any officer" would suffice, a request to the officer under whose auspices the distribution will be made is obviously preferable. Much confusion can be, and to a certain extent has been, obviated by the active establishment of detailed codes of electoral procedure by the unions themselves. In such cases, "unless these requirements are found clearly to be arbitrary, as where the request must be made twenty-four hours after nomination, failure of a candidate to comply [will] ordinarily excuse refusal of the union to honor the request."\textsuperscript{281} In any event, the candidate will be able to obtain a direct and immediate review of any such denial by private suit in a federal district court.\textsuperscript{282}

\textsuperscript{277} Wirtz v. Local 30, Operating Eng'rs, 242 F. Supp. 631 (S.D.N.Y. 1965). Likewise a requirement that a member prove his eligibility for an officer's bond of the type proscribed by section 502 of the LMRDA has been held unreasonable. Wirtz v. Local 599, Carpenters, 61 L.R.R.M. 2618 (W.D. Ky. 1966).

\textsuperscript{278} Only in reference to a declaration of candidacy have the courts found a lack of such purpose as an abstract proposition. See, e.g., Coburn v. Operating Eng'rs Local 3, 48 CCH Lab. Cas. 1 18,520 (N.D. Cal. 1963).

\textsuperscript{279} Section 481(c) expressly guarantees this right to candidates for office in "every national or international labor organization . . . and every local labor organization. . . ." It excludes federations from coverage and makes no mention of "intermediate bodies." Whether the latter omission is the result of positive design or imprecise draftsman is uncertain, although the latter is more contextually probable.

\textsuperscript{280} Jenkins, supra note 256, at 168.

\textsuperscript{281} Id.
\textsuperscript{282} 29 U.S.C. § 481(c) (1964).
Although one of the basic purposes of section 401(c) is to curtail the use of union funds in almost all aspects of the electoral process, there is no express requirement that the union charge a fee for its work. What is expressly required, however, is strict equality of treatment as to expense among all candidates. Thus if "distribution of campaign literature for one candidate is made without charge, then distribution for all candidates must be made without charge." Union funds also "may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election." While theoretical interpretative problems are rampant in determining what constitute "factual statements" or "expenses necessary for the holding of an election," in actual practice there has been no significant litigation in the area, probably as the result of a sound common-sense approach to the problem by most union leaders.

The same basic principles of fair play also apply to the use of membership lists. For even though there is only a limited basic guarantee in this regard — candidates in unions subject to a collective bargaining agreement requiring membership therein as a condition of employment have the right, once, within thirty days prior to the election, to inspect, but not to copy, the names and addresses of the members — if the union does allow more frequent inspection or allows any candidate to copy, it must do so for all. It is uncertain, however, whether private suits are available to enforce this right. Aside from these specific areas it is left to the unions themselves to establish "adequate safeguards to insure a fair election," a delegation of responsibility consistent with the legislative objective of "union democracy" and sufficiently flexible to meet the diverse demands of modern unionism.

283. U.S. DEPT OF LABOR, TECHNICAL ASSISTANCE AID NO. 5, ELECTING UNION OFFICERS 22 (1964). Section 481(g) states: "No moneys received by any labor organization by way of dues, assessment, or similar levy . . . shall be contributed or applied to promote the candidacy of any person" in a Title IV election. 29 U.S.C. § 481(g) (1964). Although this would seem to impliedly forbid the granting of any free distributions regardless of equality between candidates, it has been generally assumed that "free distributions" are not per se invalid.

284. 29 U.S.C. § 481(g) (1964). The use of employers' funds for any purpose is forbidden in all instances.


286. Fears of potential misuse of these lists by either company spies or unscrupulous members caused the restriction of the right of candidates with regard to membership lists to include inspection only. While in retrospect probably unrealistic, they were very real at the time of the passage of the LMRDA. Thus Senator Kennedy emphatically stated that the right of "inspection is not to enable him [a candidate] to have a copy." 105 Cong. Rec. 17900 (1959).

287. Daniels, supra note 285, at 325.

5. **Removal of Officers**

Although directed primarily towards guaranteeing to union members the right of recall, section 401(h) necessarily provides union officers with procedural rights analogous to those given members themselves in section 101(a)(5). Dealing expressly with the problem of the "removal of officers guilty of serious misconduct," it establishes a procedure whereby the adequacy of union removal provisions may be reviewed by the Secretary of Labor, who, if he finds deficiencies therein, may order the use of a system under which officers "may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the [other] officers. . . ."

To enable unions to correlate their procedures, as contained in their constitutions and by-laws, with the basic mandate of section 401(h), the Secretary of Labor has been further directed to "promulgate rules and regulations prescribing minimum standards . . . for determining the adequacy" of particular removal schemes. Although the Secretary, under this mandate, has done little but restate the general prerequisites of jurisprudential fairness, his regulations have served to underscore the need, in all instances of official discipline, for adequate notice, a full and fair hearing, and an authorized trial board. The sole noteworthy innovative aspect of either the statute or the regulations in this regard lies in their decided emphasis upon the use of the entire membership body, polled by secret ballot, as a determinative tribunal. While seemingly valuable insofar as it removes the possibilities of clique engineered whitewashes, the full feasibility of this trial by referendum practice has yet to be empirically established.

### B. Enforcement

For the purposes of enforcement, Title IV distinguishes between violations which occur prior to an election and those which occur.

291. This may be done only "upon application of any member of a local labor organization" in a hearing held "in accordance with the Administrative Procedure Act." 29 U.S.C. § 481(h) (1964). The aggrieved "member" may, of course, be either a rank and file worker who feels there has been a "whitewash" or an officer who feels that he has been illegally purged.
294. 29 C.F.R. § 417.2 (1967).
afterward. Pre-election violations are to be remedied by private suits in state courts, and post-election violations by an exclusive federal procedure with the Secretary of Labor as the complaining party.

1. Pre-Election Relief

Title III of Senate Bill 505, the original antecedent of what is now Title IV, established an exclusive and pre-emptive federal post-election remedy for all violations of its substantive provisions, thereby totally precluding the availability of either state or federal pre-elective relief. It was felt that to allow private pre-elective federal suits would result in overburdening the federal judiciary, while an authorization of pre-elective state court enforcement either by their own substantive laws or by Title IV would be inconsistent with the basic congressional goal of a uniform national labor policy. Subsequently, however, in recognition of the value of pre-elective suits as a means of obviating unnecessarily protracted litigation, this policy of federal preclusion was modified to preserve "existing (pre-elective) rights and remedies to enforce the constitution and by-laws of a labor organization."

By simply preserving pre-elective "rights and remedies" as they existed prior to Title IV, Congress thus limited the availability of pre-elective relief to state courts and avoided the clogging of the federal

296. See pp. 43-44 & notes 303-05 infra.
298. The proposed bill provided: "The duties imposed and the rights and remedies provided by this title shall be exclusive. . . ." S. 505, 86th Cong., 1st Sess. § 303 (1959).
301. The American Civil Liberties Union was extremely active in urging this change. See, e.g., A LABOR UNION "BILL OF RIGHTS" - DEMOCRACY IN LABOR UNION - THE KENNEDY-IVES BILL (1958).
303. In view of the exclusive federal jurisdictional approach originally adopted by S. 505, section 403 must be narrowly construed. Suspension of the pre-emptive effect of § 403 and its antecedents is one thing, enlargement of federal jurisdiction quite another. Resort to State courts prior to the election was specifically approved, but nowhere in the subsequent developments of the legislation can a change of Congressional intent, enlarging federal jurisdiction to include pre-election affairs, be found.

courts with the possible exception of diversity cases. Furthermore, by restricting state jurisdiction to the enforcement of union constitutions and by-laws, it precluded misinterpretation of Title IV's guarantees by non-labor oriented state courts and rendered their scope of activity so narrow as to make the chances of inconsistent relief de minimis. Restricting jurisdiction to the enforcement of union constitutions according to state law and without regard to Title IV avoids the development of "a crazy quilt of state legislation and court decisions," since "such proceedings... do no more than compel the union officers to comply with the rules voluntarily adopted by the members." It is not the function of the state courts, therefore, to determine whether or not union constitutional provisions are consistent with Title IV since these questions can best be handled by the federal courts in post-election proceedings. Although in some instances this may cause state courts to be ineffectual, for example, where there are no relevant constitutional provisions upon which to base relief, or more significantly, where a provision clearly violates the LMRDA, these occasions are certain to be rare and are always subject to eventual federal correction. Even in this latter instance, however, where a particular provision is subject to a general union standard of reasonableness, "the language of section 403 does not seem to prevent the state court from using the

304. In what is perhaps the best legislative analysis of the role of section 403, Senator Kennedy stated:

In the case of elections we preempt action for the Federal Government after the election is held. A suit may be filed in a state court prior to an election. The Federal Government takes preemption after an election. We have attempted to exercise Federal rights in those areas where the Federal Government can best do the job, and have attempted to provide for State preemption in the areas where the State can do it best. . . . Prior to the day of an election an individual can sue in a State. The day after an election the Secretary of Labor assumes jurisdiction.

105 CONG. REC. 6485 (1959) (emphasis added).

305. It would be singularly anomalous to allow state courts to have full jurisdictional powers to interpret and enforce Title IV when the federal courts themselves, the "primary forum for the vindication of federal rights," would be precluded from doing so. H. M. HART & H. WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 727 (1953). See notes 303 & 304 supra. Thus in Burroughs v. Operating Eng'rs Local 3, 54 CCH Lab. Cas. ¶ 11,454 (Cal. Sup. Ct. 1966), the court held that while there was some question whether state courts could enforce Title I actions, "a state court has no jurisdiction to grant an injunction or render a decision in cases alleging primarily and substantially a violation of Title IV rights." Id. Accord, Beiso v. Robilotto, 26 Misc. 2d 137, 212 N.Y.S.2d 504 (Sup. Ct. 1960).

306. See Libutti v. DiBrizzi, 343 F.2d 460 (2d Cir. 1965).


309. While this interpretation may cause theoretical problems insofar as union constitutions will be interpreted according to state law prior to an election and pursuant to federal law thereafter, such an approach, has, however, support in the legislative history of the Act. See note 304 supra. Also, it would seem to present no significant chance for inconsistent interpretations in view of the simplified nature of this concurrent substantive jurisdiction. See Libutti v. DiBrizzi, 343 F.2d 460 (2d Cir. 1965).
provisions of Title IV and the cases decided under that title as a basis for determining" compliance with that standard.\textsuperscript{310} In this manner, the dangers of misapplication can be even further reduced.

Thus, once it was determined that the public interest would not be served by authorizing full-scale private suits in federal courts, Congress preserved the existing jurisdictional bases upon which state courts could grant pre-elective relief but limited the latter's substantive ability to do so to prevent a conflict with uniform national labor policy. However, since most union constitutions are fairly detailed in this area,\textsuperscript{311} and since they in turn must conform to the basic provisions of Title IV,\textsuperscript{312} most consequential violations will be able to be speedily remedied. Thus pre-elective relief will be available when, by the very nature of the remedy, it is most appropriate, that is, where the law is relatively certain and only the facts are in dispute. In so doing, Congress thereby avoided the dangers inherent in the use of pre-elective suits when they are utilized to obtain hasty judgments on complex interpretive issues, issues which will be much better decided under the restrained and considered procedure of post-election suits under the direction of the Secretary of Labor.

2. Post-Election Relief

In contrast to the interpretive donnybrook which has characterized the pre-elective area, there is no question but that once an election has been "conducted" the exclusive remedy for any alleged violations in its conduct is by complaint to the Secretary of Labor.\textsuperscript{313} In analyzing the proper scope of Title IV, therefore, it is obviously necessary to determine precisely when an election has, in fact, been "conducted." Three reasonable alternatives suggest themselves — when the voting begins, when it ends, or when the votes are tabulated and the results announced. The emasculative effect which the first of these hypotheses would have on the scope of Title I\textsuperscript{314} as well as on pre-elective relief under Title IV is obvious,\textsuperscript{315} the same is true of the second, which, although providing

\textsuperscript{310} Note, Election Remedies Under the Labor-Management Reporting and Disclosure Act, 78 Harv. L. Rev. 1617, 1629 (1965).

\textsuperscript{311} See, e.g., U.S. Dep't of Labor, Union Constitutions and the Election of Local Union Officers (1965); U.S. Dep't of Labor, Bull. No. 1239, Union Constitution Provisions (1958); cf. L. Bromwich, Union Constitutions (1959).

\textsuperscript{312} "The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter." 29 U.S.C. § 481(e) (1964).

\textsuperscript{313} 29 U.S.C. § 482 (1964).

\textsuperscript{314} See pp. 7-11 supra.

\textsuperscript{315} Under this approach, any offenses committed at the polling stations themselves, no matter how egregious, would be insulated from all immediate corrective action. Fortunately, however, it has been adopted by the one court which has considered the problem. Jennings v. Carey, 51 CCH Lab. Cas. ¶ 19,423 (D.D.C. 1964); see Note, Election Remedies Under the Labor-Management Reporting and Disclosure
for a more prolonged period of direct suit availability, creates a "dash to the courtroom" procedure which would hardly prove beneficial to either the parties or the court. 316

Under the third alternative, however, a wide range of pre-elective suits would be guaranteed. While this, of course, raises the danger of its potential abuse by nuisance litigation, the problem is more apparent than real. For, although this approach extends the jurisdictional availability for pre-elective relief, it does not increase its substantive content. In view of the limited scope of post-Calhoon Title I as well as the narrow scope of state court pre-elective relief under Title IV, the courts should be able to quickly dispose of meritless cases.

Under section 402, 317 any union member who has either exhausted all available union remedies or failed to obtain a final decision within three months of invoking them, may, within one month thereafter, file a complaint with the Secretary of Labor alleging a violation of section 401. The Secretary must then investigate the complaint, and if he finds probable cause to believe that a violation has taken place, may bring suit against the offending unions within sixty days from the date of the original complaint.

a. Exhaustion of Remedies. — Unlike either the Title I 318 or the common law 319 doctrines of exhaustion, the Title IV exhaustion requirements have been consistently construed 320 to prohibit discretionary exceptions 321 in their application. For, although the statutory language itself does not necessarily require such a mandatory approach, 322 the

Act, 78 HARY. L. REV. 1617, 1628 (1965). Noting the potential gap which could have been created by a literal reading of section 403's two limiting terms, "prior to the conduct" and "already conducted," the court refused to rule that an election "in progress" was not "conducted," finding a congressional intent to avoid external interference at such a time. 51 CCH Lab. Cas. ¶ 19,423, at 32,898. In view of the complete lack of congressional material on the issue, the decision is unjustified in addition to being unsound.

316. See Calhoon v. Harvey, 379 U.S. 134, 146 n.7 (1964) (concurring opinion).


318. See pp. 17-26 supra.

319. See p. 18 supra.


321. Where the internal complaint is to be heard by the very people against whom it is being made, there may be some basis for dispensing with exhaustion. See Wirtz v. Local 125, Hod Carriers, 231 F. Supp. 590, 595 (N.D. Ohio 1964).

322. A member of a labor organization—

1) who has exhausted the remedies available . . .

2) who has invoked such available remedies without obtaining a final decision . . .

may file a complaint . . .

29 U.S.C. § 482(a) (1964) (emphasis added). These two alternatives are exclusive. If the union member does not file within one month after his three months have expired, he must then wait until he has obtained a final decision. See Jenkins, Trade Union Elections, in REGULATING UNION GOVERNMENT 182 (Estey, Taft & Wagner ed. 1964).
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legislative history clearly indicates that a member "must show that he has pursued any remedies available to him within the union . . . in a timely manner." He need not, however, have exercised the pre-elective rights available to him.

Although this interpretation of section 402 is certainly most consistent with its legislative history, the rigidity of such an approach on the part of Congress is somewhat anomalous in the context of the entire LMRDA. There is little reason to differentiate between Titles I and IV in this regard. In fact, it would seem that if a rigid approach were to be used at all, it should be in conjunction with Title I which does not have the administrative safeguards of Title IV to prevent overly litigious members from rushing into court.

b. The Investigatory Process. — Assuming that exhaustion has been accomplished, there are no formal requirements for the filing of a complaint except timeliness. All that a member need do is send a letter to the Secretary of Labor alleging "that any of the election procedures of Title IV has been violated." After an initial sorting process to eliminate frivolous and untimely claims, those with prima facie merit are then subjected to an intensive investigation, pursuant to the authority granted the Secretary by section 601, to determine

323. S. Rep. No. 187, 86th Cong., 1st Sess. 21 (1959) (emphasis added). The rationale for the requirement is, of course, that it "preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections." Id. see also Cox, The Role of Law in Preserving Union Democracy, 72 Harv. L. Rev. 609, 633 (1959).


325. The informal nature of the administrative process allows for frequent voluntary corrective action by unions once they have been apprised of their deficiencies. In this manner, union coffers are not depleted by unnecessary legal fees and the self-corrective goals of the LMRDA are promoted. See, e.g., W. Wirtz, Labor and the Public Interest 86 (1964), which indicates that of the 249 actionable Title IV complaints filed between September, 1959 and April, 1964, 193 were settled voluntarily.

326. Actually the administration of section 402 is conducted by the Department of Labor's Office of Labor-Management and Welfare-Pension Reports (LMWP). This department, in addition to its main office in Washington, has twenty-four area and five regional offices where complaints may be filed.

327. Electing Union Officers, supra note 283, at 38.

328. There is no formal appeal procedure at this level.

329. 29 U.S.C. § 521 (1964). The filing of a complaint is not necessary in order to authorize investigative action nor is the Secretary required to have probable cause to believe that a violation has occurred. See Local 57, Operating Eng'rs v. Wirtz, 346 F.2d 552 (1st Cir. 1965); Goldberg v. Local 299, Teamsters, 293 F.2d 807 (6th Cir.), cert. denied, 368 U.S. 938 (1961); Wirtz v. Edmonds, 51 CCH Lab. Cas. ¶ 19,573 (D. Colo. 1965); Wirtz v. Local 191, Teamsters, 218 F. Supp. 885 (D. Conn.), aff'd, 321 F.2d 445 (2d Cir. 1963). He must merely "believe it necessary" to determine whether or not there has been a violation. Without a complaint, however, no action can be brought against the offending union. Wirtz v. Local 125, Hod Carriers, 231 F. Supp. 590 (N.D. Ohio 1964). In conducting his investigation, the Secretary may "enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the relevant facts." 29 U.S.C. § 521(a) (1964). Furthermore, he may delegate his powers to the
whether there is "probable cause to believe that a violation . . . has occurred. . ."330 If the Secretary does find such probable cause and finds further that the violation has not been remedied, "he is directed to bring, within 60 days331 after the complaint has been filed, a civil action against the labor organization in a Federal district court."332 He cannot, however, "institute court proceedings upon the basis of a complaint alleging such violations unless he also finds probable cause to believe that they 'may have affected the outcome of an election.'"333 The Secretary's decisions as to probable violation and probable effect are, in turn, subject to judicial review at the instance of the complainant,334 but cannot be challenged by the offending union.335

3. Judicial Enforcement

a. Scope of the Right to Sue. — The expansive scope of the Secretary's powers of investigation338 has given rise to yet another problem in the administration of Title IV, that of determining the extent to which the Secretary's right to sue is limited by the scope


330. 29 U.S.C. § 482(b) (1964). 331. The sixty day requirement is not absolute. Thus, where the Secretary did not file suit until sixty-two days after receiving the original complaint, but the sixthieth day was a Sunday and the following Monday a federal holiday, dismissal was not required. Wirtz v. Local 611, Hod Carriers, 229 F. Supp. 230 (D. Conn. 1964). Likewise, time spent by the Secretary in seeking enforcement of a subpoena against a defendant union is not to be included in computing the sixty days. Wirtz v. Local 47, Masters, 51 CCH Lab. Cas. ¶ 19,651 (N.D. Ohio 1965); see Wirtz v. Local Union 169, Hod Carriers, 52 CCH Lab. Cas. ¶ 16,752 (D. Nev. 1965).

332. 29 C.F.R. § 452.16(a) (1967).

333. 29 U.S.C. § 452.16(b) (1967); see pp. 50-52 infra. See also Schonfeld v. Wirtz, 54 CCH Lab. Cas. ¶ 11,499 (S.D.N.Y. 1966).

334. Schonfeld v. Wirtz, 54 CCH Lab. Cas. ¶ 11,499 (S.D.N.Y. 1966). Contra, Katrichic v. Wirtz, 53 CCH Lab. Cas. ¶ 11,289 (D.D.C. 1966); Altman v. Wirtz, 50 CCH Lab. Cas. ¶ 19,211 (D.D.C. 1964). Where, although he finds requisite probable cause, the Secretary decides to stipulate a compromise settlement, the private complainant, if dissatisfied, may not then intervene. Stein v. Wirtz, 54 CCH Lab. Cas. ¶ 11,450 (10th Cir. 1966). Whether he might seek review of the Secretary's action is uncertain, although the possibility is unlikely.

335. See Wirtz v. Local 30, Operating Eng'rs, 242 F. Supp. 631, 633 (S.D.N.Y. 1965), rev'd and remanded on other grounds, 366 F.2d 438 (2d Cir. 1966). The rationale behind this refusal is that the Secretary's action "like indictment by a Grand Jury . . . establishes nothing as to the merits of the action," and therefore any challenge would be pointless. Id.; accord, Wirtz v. American Guild of Variety Artists, 54 CCH Lab. Cas. ¶ 11,680 (S.D.N.Y. 1967); Wirtz v. Local 30, Operating Eng'rs, supra.

336. See p. 46 supra.
of the allegations in the union member's original administrative complaint. Without such a complaint there is, of course, no right to sue. The problem arises when the Secretary, in investigating to determine whether "probable cause" exists, discovers additional violations not included in the complaint. To deny him the right to sue on the basis of these additional violations would necessarily often result in ineffectual corrective action; on the other hand, to grant him carte blanche authority to challenge all violations which come to his attention in this manner would emasculate the private complaint requirement.

In *Wirtz v. Local 125, Hod Carriers* the Secretary sought to challenge violations in the defendant union's general election which he discovered while investigating a complaint concerning a subsequent runoff. The court dismissed the election charges stating that, "We do not think that the Secretary under the guise of 'public interest' may be permitted to complain when the membership has not..." Subsequent cases, however, while espousing the general theory of *Local 125*, have, nevertheless, taken a more "common-sense" approach. Thus in *Wirtz v. Local 169, Hod Carriers*, even though only one member had objected, the court upheld a complaint alleging multiple deprivations of the right to vote and construed the Act to mean that "the Secretary has... the right... to base a complaint to the Court on every issue which the defendant union had a fair opportunity to consider and resolve in connection with any member's appeal..." Using the same reasoning, it further allowed the Secretary to challenge the union's conduct in distributing campaign lists since an internal objection had been filed — although none had been made to the Secretary. "Such an approach... preserve[s] the union's first right to correct its own procedures and... help[s] to avoid the intolerable situation which [would] result if the union [is] permitted to treat the

337. See p. 46 supra. See also 29 U.S.C. § 482 (1964).
339. 231 F. Supp. 590 (N.D. Ohio 1964). Subsequent to this decision, a general election was conducted. In holding that this second election mooted the questions raised concerning the first, the Sixth Circuit refused to allow the district court's decision, which had thereby become unappealable, to stand as precedent. Without commenting on the merits of the decision, it therefore vacated it. *Wirtz v. Local 125, Hod Carriers, 55 CCH Lab. Cas. ¶ 11,781 (6th Cir. 1966).*
340. 231 F. Supp. at 595. Were it not for the fairly reasoned legal analysis that precedes it, the court's statement that "[i]f the members are satisfied, then the government ought to be satisfied," would be almost ludicrously naive.
341. 52 CCH Lab. Cas. ¶ 16,752 (D. Nev. 1965).
342. Id. (emphasis added). Under this approach, the exhaustion of remedies principle is not even indirectly observed in that the union will have some reasonable prior notice of all violations which the Secretary intends to challenge.
separate complaint of each appealing member as an isolated "case" filed for vindication of the personal rights of the member without regard for the public interest.

While entrenched abuses could undoubtedly be rooted out more quickly if the Secretary were given almost absolute powers to sue, Congress determined that the "first right" of a union to self-correction was of such consequence that it felt compelled to expressly require both an exhaustion of remedies and a private complaint as prerequisites to the filing of a Title IV suit. Within the context of this determination, section 402 should receive a "practical interpretation." It should not be construed, however, so as to eliminate the substance of these requirements from the Act. The adoption of an unlimited approach allowing the Secretary to raise any matter he desires subsequent to a complaint, would serve only to transform both into pro forma gestures. Such whimsy has never been a congressional characteristic, and criticisms of congressional policy, no matter how substantively justified, do not in turn justify semantic quibbling as a means of obviating unusually clear congressional intent.

b. "May have Affected." — Although few cases have arisen, perhaps the most substantively troublesome hurdle for the Secretary in his prosecution of Title IV suits is the requirement that he prove that the violations of which he complains "may have affected" the outcome of the challenged election. Without such a demonstration, no relief can be granted, notwithstanding the existence of even multiple violations. As originally drafted, section 402 required the Secretary to prove actual "effect." However, recognition of the severity of such a standard resulted in a modification of the requisite to a demand.
that he prove that the violation "did or reasonably could have been expected to affect the result of an election."\textsuperscript{352}

Unfortunately this obviously liberal attitude on the part of Congress has been, until recently, somewhat circumscribed by narrow judicial interpretation. For, although the issue is frequently of subordinate importance and hence subject to cursory treatment,\textsuperscript{353} where it has been contested the courts have demanded a greater degree of proof than the statute would seem to require. This has been particularly true in candidate disqualification cases where the courts have required the Secretary to prove that the excluded candidates, if they had been allowed to run, would have had a reasonable chance of winning.\textsuperscript{354} Such an approach overlooks the publicity values which accrue to minority candidates even though their chances of election are remote.\textsuperscript{355} Under this standard, "until . . . a faction approaches majority status, judicial relief in the federal courts will be absent."\textsuperscript{356}

In recently rejecting the imposition of so "stringent a burden on the Secretary," the Second Circuit, in \textit{Wirtz v. Local 410, Operating Eng'rs},\textsuperscript{357} found that the exclusion of willing candidates from the ballots precluded the availability of tangible evidence of the effect of the exclusion on the election and held that any proof relating to effect on outcome must necessarily be speculative.\textsuperscript{358} It therefore, in effect, established a presumption that "exclusion affects." The court refused, however, to establish a per se rule. Noting that evidence of the excluded candidates' performance in previous years was relatively inconclusive, it also found that the "excluded candidates were politically active union members one of whom had stood for and even won office in earlier years [and that] only a small minority of the union electorate actually voted."\textsuperscript{359} The court, therefore, apparently would have refused to grant relief if, for example, the excluded candidates had been totally

unsuccessful previously and, in the contested election, there had been nearly full participation by the voting membership.  

Such an approach is well designed to correct a potentially dangerous gap in Title IV's enforcement process. When the violation is certain but the "effect" not easily susceptible of proof, it certainly is practical as well as just to place the burden upon the offending party. In view of the restricted nature of post-Calhoon Title I rights, it is especially imperative that Title IV be administered in a manner consonant with the goal of internal union democracy.

4. Judicial Relief

   a. Preliminary Injunctions — The Problem of Mootness. — Due to the extensive time involved in obtaining a final decision in a Title IV suit, there has been an increasing number of cases in which the Secretary's complaint has become moot because a subsequent election was held during the pendency of the original proceedings. Since the procedural prerequisites of Title IV limit the availability of supplemental complaints challenging the second election, there has been created a potential merry-go-round of uncorrected abuses whereby one suit becomes moot while the other is not as yet "ripe."

   In an attempt to terminate this situation two circuit courts, in addition to urging the streamlining of dockets, have recently authorized the use of temporary injunctions by district courts to enjoin the holding of all subsequent elections pending a final determination of the Secretary's initial suit. Thus "where it is apparent that the Secretary is likely to succeed in his claim that the election under which the union's officers are currently serving was conducted in violation of the requirements of the" LMRDA, where the second election is being held under substantially the same conditions as the first, "where it also


361. Although the average wait is fifteen months, longer times are not uncommon, especially where appellate review is exercised. Jenkins, supra note 322, at 188.

362. See, e.g., Wirtz v. Local 153, Glass Bottle Blowers, 54 CCH Lab. Cas. ¶ 11,613 (3d Cir. 1966); Wirtz v. Local 410, Operating Eng'rs, 366 F.2d 438 (2d Cir. 1966); Wirtz v. Local 545, Operating Eng'rs, 366 F.2d 435 (2d Cir. 1966).


364. Wirtz v. Local 410, Operating Eng'rs, 366 F.2d 438 (2d Cir. 1966). The Second Circuit expressly recommended that such cases "be assigned at an early stage to one judge for all purposes" in order to expedite trial. Id. at 444. See also Wirtz v. Local 125, Laborers' International, 55 CCH Lab. Cas. ¶ 11,781 (6th Cir. 1966); Wirtz v. Local 153, Glass Bottle Blowers, 54 CCH Lab. Cas. ¶ 11,613 (3d Cir. 1966).

365. See cases cited note 364 supra.

366. Wirtz v. Local 545, Operating Eng'rs, 366 F.2d 435, 436 (2d Cir. 1966).
appears that such injunction will not cause serious injury to the unions concerned, and where the Secretary is likely to suffer a very real detriment in his attempt to enforce the law if such restraining order is not granted," then an injunction should issue. 367 Section 402(b) itself does not authorize the exercise of such equitable powers. While it does allow a court "to take such action as it deems proper to preserve the assets of a labor organization," it is otherwise silent with respect to the nature of its pre-trial remedies. However, this omission is not determinative of the question of the existence of such remedies. On the contrary, when Congress entrusts to an equity court the enforcement of prohibitions contained in a regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in the light of statutory purposes. 371 Certainly this should be the case where the court is merely seeking to retain jurisdiction and maintain the status quo pending a final decision on the merits. 372

b. Post-Trial Relief. — Where a violation is found which "may have affected the outcome of an election," Section 402(c) expressly provides that "the Court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary." 374 "Since an election is not to be set aside for technical viola-

367. Id.
368. The liberal attitude of the Second Circuit in this regard is indicated by the fact that it reversed a district court's discretionary denial of a temporary injunction in the first case to come before it after its decision in Local 410. See id.
369. S. 1555, 86th Cong., 1st Sess. (1959). This provision was originally applicable only after a trial on the merits. S. 505, 86th Cong., 1st Sess. (1959); it was subsequently advanced to pre-trial availability.
370. Although the House version of the LMRDA, H.R. 8400, 86th Cong., 1st Sess. (1959), did expressly provide for judicial authority "to prevent and restrain such violation and for such other relief as may be appropriate," section 402(a), also had several other proposed bills, S. 748, 86th Cong., 1st Sess., §§ 302(d), 405; H.R. 8342, 86th Cong., 1st Sess., § 402(a) (1959). The fact that the Senate proposal was adopted does not indicate any congressional attempt to restrict the federal court's equitable jurisdiction. On the contrary, it represents a preoccupation with the choice of public versus private enforcement suits and of "possible" over "actual" effect prerequisites. H.R. Rep. No. 1147, 86th Cong., 1st Sess. 35 (1959). These were major choices which, in the turmoil of the end of the congressional session, simply left no time for the transposition of procedural niceties from one bill to the other. See note 4 supra.
373. 29 U.S.C. § 482(c)(2) (1964). The same is true where "an election has not been held within the time prescribed by Section 481 . . . ." 29 U.S.C. § 482(c)(1) (1964).
374. 29 U.S.C. § 482 (1964). This section further provides that after the completion of the supervised election:

The Secretary shall promptly certify to the court the names of the persons elected, and the court shall enter a decree declaring such persons to be the officers of the labor organization. . . . An order directing an election, dismissing
tions," the court may not void an election unless these preconditions are satisfied. Conversely, in view of the use of the mandatory "shall" in defining the remedy, it would seem that once these conditions have been met, then the court has no discretion and must void the election. Although the legislative history of section 402(c) is equivocal on this point, the language of the statute itself certainly is not.

This is not to say, however, that where there has been a violation but no demonstration of "effect," the federal courts have no residual equitable powers. Where a candidate, despite a violation of his rights under section 401, wins an election, it would seem that he should at least be allowed to acquire an injunction prohibiting any interference with his assumption of office. More specifically, for example, if incumbent candidates were to announce a false vote tally, the insurgents, through the Secretary, should be able to seek immediate equitable relief aimed at obtaining a proper declaration of results. The alternatives of requiring a new election in such circumstances, or taking no action whatsoever, would merely invite such unlawful action, particularly in close elections since the incumbents, in addition to remaining in office during the entire pendency of the proceedings, would then still have hopes of winning reelection. Thus although the violation would be merely a technical one and could not have actually affected the outcome of the election, it would create a situation for which sound public policy would require immediate correction.

The congressional policy of avoiding useless elections, coupled with its equally determined policy of rooting out union election abuses, necessarily gives rise to a presumption that Congress intended the federal courts to have flexible equitable powers of relief. Certainly these policies do not give rise to a contrary presumption. "Unless a

a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal. 29 U.S.C. § 482(c)-(d) (1964) (emphasis added).


376. But see Beaird, supra note 338, at 1336.


378. It is the policy of the Secretary of Labor not to sue unless he has "probable cause to believe that the violations may have affected" the election outcome. 29 C.F.R. § 452.16(d) (1967). However, since the Secretary's findings are not determinative of the issue, there obviously are cases where, although the violation is certain, the courts will find no effect.

379. See note 370 supra.

380. Such a situation, in fact, developed in Jennings v. Carey, 51 CCH Lab. Cas. ¶ 19,423 (D.D.C. 1964). However, the issue was mooted when the incumbent voluntarily stepped down before a Title IV action could be filed.

381. 29 U.S.C. § 482(a) (1964) provides that "[t]he challenged election shall be presumed valid pending a final decision thereon . . . and in the interim the affairs of the organization shall be conducted by the officers elected . . . "

statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." 383 While the use of such remedial powers will undoubtedly be few because of the Secretary's restrictive suit position, 384 and because injunctions generally would be inappropriate remedial devices, 385 such an approach is still necessary to provide the sufficiency of flexibility which the courts will need to render Title IV fully effective in the post-Calhoon LMRDA.

V. Conclusion

While the ascertainment of the overall effects of Titles I and IV must await further empirical study, 386 certain preliminary conclusions seem warranted on the basis of the case analysis presented. Initially it seems certain that Title I, despite being judicially limited in both its jurisdictional and substantive scope, has nevertheless emerged as a meaningful "Bill of Rights" for the union rank and file. This is especially true with regard to the guarantees of free speech and disciplinary due process, with the former in particular having received enlightened and significant interpretations from the courts. Although it is doubtful that challenges to union establishments can be made with complete impunity, it at least no longer seems necessary to require either economic and social martyrdom or preliminary irresponsibility in order to assert membership rights.

Negatively, however, it would seem that none of the other guarantees in Title I have proven particularly consequential. The equal protection clause is impotent against all but overt "discrimination," a distinctly rara avis in this age of sublety. Furthermore, the protection of the right to sue, with its concomitant exhaustion of remedies, differs little from the common law. While its absolute four month limitation has probably had beneficial results, as construed in Detroy, its long term diminution of union self-initiative is disturbing. Finally, of course, the problem of exorbitant dues was never regarded as serious either prior to or after the passage of the Act.

Title IV, a considerably more economical remedy for the private complainant than Title I, has nevertheless proven considerably less popular among union members whenever they have been able to choose

384. See 29 C.F.R. § 452.16(a) (1967).
385. Since section 402 is an equitable remedy, Wirtz v. District Council 21, Painters, 211 F. Supp. 253 (E.D. Pa. 1962), probably no action for damages could be maintained, even if they could be shown.
386. The author initiated such research under the benefits of a W.W. Cook Research Grant at the University of Michigan, and is currently completing the same.
between the two. Essentially limited to post-elective relief and subjected to high standards of proof and effect, Title IV has, as statutorily and judicially developed, become an unwieldy instrument of reform in many areas of its potential use. Rigidity of filing times, an absolute exhaustion requirement, and a lengthy, highly detailed administrative process of enforcement have rendered it quite accurate yet extremely limited in its availability. It has, in effect, become a buffalo gun in an area generally troubled with mice.

Perhaps the most substantial criticism of these titles, however, lies not with the merits of either but rather with the disjointed coverage which they provide for the broad spectrum of union elections. As interpreted by Calhoon, they have left a troublesome pre-election void for which Title I provides no substantive rights and Title IV has little jurisdictional basis. As a direct result of this remedy gap, there will continue to be, even under the LMRDA, many instances in which minor electoral violations will go uncorrected due to delay-caused apathy or lack of a sufficient quantum of proof. While it is true that the violations involved will seldom be of individual significance, their potentially erosive effect upon the growth of union democracy certainly will be.

Finally, apart from these substantive defects, Titles I and IV are subject to further criticism because of the interpretive abdication to the federal judiciary. From defining the very scope of membership applicability to delineating the nature of their inter-relationship, as well as the clarifying of a myriad of administrative problems, the courts have, for all practical purposes, written these titles as they stand today. While this in itself is not extraordinary, two factors combine to make it objectionable in the context of the LMRDA. Initially, neither title is a vague delegation of power, phrased in terms of reasonableness; interpretations here were required because of the consistent inability of Congress to specify its intentions. Secondly, even apart from the justification of such an abdication as an abstract proposition, it should be emphasized that in this instance it occurred in an area of traditional judicial non-intervention.

The combined effect of this back-handed delegation and the traditional judicial conservatism in dealing with voluntary associations has been an oftentimes fervent search for, and unjustified reliance upon, ambiguous legislative history. By frequently failing to spell out its own intentions in a clear manner, and at the same time failing to provide a reasonable mandate for judicial action, Congress necessitated the hesitant step-by-step approach which has thus far typified the administration of Titles I and IV. This is not to deny that they have
generally been construed in a manner consistent with the announced congressional goals of union democracy. However, there is certainly little reason to extol the virtues of a relatively haphazard and unpredictable statute merely because its original aims have been approximated.

Titles I and IV have provided a sound impetus towards union democracy, partially because of their specific guarantees, but more so because of the significance and stature which they have conveyed to the concept of union democracy. While the practicality of this concept has come under increasing attack as of late, particularly with regard to its effect upon responsible collective bargaining, it still stands, as it must, as the utopian goal of the American labor movement. Temporary problems in its current implementation are not demonstrative of theoretical defects, but, on the contrary, reinforce the necessity for such democracy by demonstrating the deleterious effects created by its absence. Titles I and IV have many faults, but they are a long overdue step in the right direction.

387. See note 6 supra.