LMRDA Title IV's § 401(e): The Issue of "Broad Reach" in the Process of Guaranteeing a Reasonable Opportunity to Run for Union Office

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In drafting the Labor-Management Reporting and Disclosure Act of 1959¹ (the Act or LMRDA), Congress reiterated the federal government's responsibility, *inter alia*, to protect employee rights² because of the substantial effect labor-management disputes can have on interstate commerce.³ Congress also perceived a growing number of instances of corruption and abuse by unions and employers⁴ and declared that legisla-

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2. Section 1(a) of the LMRDA, 29 U.S.C. § 401(a) (1988), states “[t]he Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to . . . choose their own representatives.” *Id.*

3. *Id.* The Act provides that:

   the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

*Id.*

4. *Id.* § 401(b). The LMRDA further states:

   The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

*Id.*
tion was needed to protect the public in the free exercise of these rights.\(^5\) In Title IV of the LMRDA, section 401(e), Congress sought to strike a balance between a union’s right to impose “reasonable” restrictions on members seeking to hold office and the member’s right to participate in the election affairs of his union.\(^7\) The question of what type of union regulation should be considered “reasonable” has produced no clear consensus in the thirty-five years since the LMRDA’s enactment.\(^8\) The Department of Labor, empowered through the Secretary of Labor to enforce section 401(e) rights,\(^9\) concedes that the issue is “not susceptible

5. Id.

6. LMRDA § 401(e), 29 U.S.C. § 481(e). The statute states in relevant part that “every member in good standing shall be eligible to be a candidate and to hold office (subject . . . to reasonable qualifications uniformly imposed).” Id.

7. Id.

8. One early commentator, shortly following the Court’s ruling in Local 3489, United Steelworkers of America v. Usery, 429 U.S. 305 (1977), correctly noted that the decision “left the fundamental issue of what constitutes a reasonable candidacy requirement still undecided.” See Doris B. McLoughlin & Anita L.W. Schoomaker, The Landrum-Griffin Act and Union Democracy 33 (1979).

9. LMRDA § 402(b), 29 U.S.C. § 482(b) (1988) states, in relevant part: “The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization . . . .” Id. The Secretary of Labor’s enforcement powers, and the willingness of Department of Labor (DOL) officials to bring suit on behalf of candidates challenging union elections, is an area of considerable importance and controversy. One author states that, according to a DOL official with whom he spoke, the Department will bring suit only when no facts are in dispute between either the challenging or victorious party. Thomas Geoghegan, Which Side Are You On? 198-200 (1992). Geoghegan relates the following conversation: “‘You mean, if ten people saw Mr. A. steal a ballot but Mr. A. said he didn’t, you wouldn’t bring the case?’ ‘No, there would be a fact in dispute.’” Id. at 200. Geoghegan calls it a “delusion” to believe that the Labor Department might actually enforce the LMRDA. Id. Essentially, Geoghegan concludes, the Department “doesn’t enforce the law.” Id.; see also Allan J. Topol, Note, Union Elections Under the LMRDA, 74 Yale L.J. 1282, 1285 (1965). Topol stated that one outcome of the LMRDA’s enforcement provision, which also requires that a complaining union member exhaust all internal union remedies before petitioning the Secretary, is to allow those who break the law “to enjoy its benefits during the period of litigation.” Id. at 1286-87. Coupled with other “traditional delaying tactics in pre-trial discovery,” the effect of the LMRDA’s exhaustion requirement may actually preclude a complainant from receiving effective relief “since terms of local officers are limited to three years.” Id. at 1288. Even after the Secretary has brought suit on behalf of a complaining candidate, a court can overturn the election only “[i]f, upon a preponderance of the evidence” it is demonstrated that the violation “may have affected the outcome of an election.” LMRDA § 402(c), 29 U.S.C. § 482(c). This proof requirement precludes many suits from being brought. See Geoghegan, supra at 199. For example, if a union member has been denied her right to observe the counting of ballots because she has been locked out of the room, how is she to prove that a violation has occurred—let alone prove that it might have affected the election’s outcome? Id. See generally Edgar N. James, Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections, 13 Harv. C.R.-C.L. L. Rev. 247, 293-94 (1978) (analyzing the enforcement
of precise definition,"\textsuperscript{10} but rather "turn[s] on the facts in each case."\textsuperscript{11}

In one form or another, however, nearly all courts have utilized the test announced by the United States Supreme Court in \textit{Wirtz v. Hotel, Motel \& Club Employees Union, Local 6},\textsuperscript{12} which stated that candidacy restrictions should be consistent with promoting fair and democratic elections.\textsuperscript{13} Five months earlier, the Court had struck the same balance in \textit{Wirtz v. Local 153, Glass Bottle Blowers Ass'n}\textsuperscript{14} stating that Congress intended society's vital interest in protecting union members' rights to participate in democratic union elections to supersede a union's interest in its own scheme of Title IV and stating that "the agency and judicial construction of that scheme, radically compound the problems of non-elite candidates"). \textit{See also Note, \textit{Union Elections and the LMRDA: Thirteen Years of Use and Abuse}, 81 \textit{Yale L.J.} 407, 472-529 (1972); Recent Development, 1971 \textit{U. Ill. L.F.} 745 (providing an in-depth case study analysis of the Secretary of Labor's exercise of his § 482 enforcement powers).\textsuperscript{10}} 29 C.F.R. § 452.36(a) (1992).

\textsuperscript{11} Id. The Department of Labor's regulations cite \textit{Wirtz v. Hotel, Motel \& Club Employees Union, Local 6, 391 U.S. 492 (1968)}, as establishing "general guidelines" against which a rule may be judged. 29 C.F.R. § 452.36(a). The regulations also provide five factors to be considered in assessing a qualification's reasonableness:

(1) The relationship of the qualification to the legitimate needs and interests of the unions;

(2) The relationship of the qualification to the demands of union office;

(3) The impact of the qualification, in the light of the Congressional purpose of fostering the broadest possible participation in union affairs;

(4) A comparison of the particular qualification with the requirements for holding office generally prescribed by other labor organizations; and

(5) The degree of difficulty in meeting a qualification by union members.

29 C.F.R. § 452.36(b)(1)-(5).

\textsuperscript{12} \textit{Hotel Employees}, 391 U.S. at 492.

\textsuperscript{13} Id. at 499. In full, the Court stated:

Congress plainly did not intend that the authorization of § 401(e) of "reasonable qualifications uniformly imposed" should be given a broad reach. The contrary is implicit in the legislative history of the section and in its wording . . . . This conclusion is buttressed by other provisions of the Act which stress freedom of members to nominate candidates for office. Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents.

It follows therefore that whether the Local 6 bylaw is a "reasonable qualification" . . . must be measured in terms of its consistency with the Act's command to unions to conduct "free and democratic" union elections.

\textit{Id.} (emphasis added) (footnote omitted). In analyzing the regulation, which prevented 93% of the union's membership from becoming a candidate for high union office, the Court found the regulation unreasonable. \textit{Id.} at 502.

\textsuperscript{14} \textit{Wirtz v. Local 153, Glass Bottle Blowers Ass'n, 389 U.S. 463, 475 (1968)}. The union bylaw in question required members to attend 75% of the union's regular meetings over a two-year period in order to be eligible to run for office. \textit{Id.} at 466.
autonomy. The Supreme Court noted in *Hotel Employees* that Congress did not intend that such restrictions be given "broad reach."  

While the Court was unanimous in *Hotel Employees*, a schism developed nine years later. Justice Brennan's majority opinion in *Local 3489, United Steelworkers v. Usery* struck down a union's meeting attendance requirement as being too restrictive. Justice Powell and the two other dissenting Justices, however, called the Court's ruling an unnecessary intrusion into the internal affairs of the union. In Justice Powell's view, a union regulation should be held valid when it serves a legitimate union interest or purpose.

Thus, while the majority's ruling in *Steelworkers* was intended to resolve discrepancies among the federal circuit courts of appeals as to what types of union regulations are reasonable, several courts since have interpreted broadly the Court's narrow admonition. In *McLaughlin v.*
American Postal Workers Union, for example, a district court struck down as unreasonable a union regulation that prohibited a union member who had applied for a management position within the previous two years from running for union office. According to the court, the LMRDA clearly states that "the word 'reasonable' [should be interpreted] narrowly so as to afford maximum protection to the purposes of the Act." Yet an almost identical union provision was upheld in 1991 by the United States Court of Appeals for the Sixth Circuit in Martin v. Branch 419, National Ass'n of Letter Carriers, which defended the union's regulation as reasonable because it was consistent "with the Act's command to unions to conduct 'free and democratic' union elections." While acknowledging the Hotel Employees/Steelworkers Courts' statement that Congress did not intend the term "reasonable qualifications" to be given a broad reach, the Sixth Circuit focused on Justice Brennan's qualifying language from the Hotel Employees/Steelworkers decisions which provided that the LMRDA "does not render unions powerless to restrict candidacies for union office." In Letter Carriers, the Sixth Circuit found that the union had a strong interest in ensuring undivided loyalty from its elected officials.

Adding to the confusion before the courts, there has been no shortage of challenges to variations of union eligibility regulations. Union bylaws have attempted to limit candidacies to members who have met attend-

680 F. Supp. 1519 (S.D. Fla. 1988) (striking down a union regulation that prohibited union members who had applied for a management job within the previous two years from seeking union office).


26. Id. at 1520.

27. Id. at 1522 (citing Steelworkers, 429 U.S. at 309). The Court continued that "[t]his patently unreasonable limitation of eligibility is exactly what Congress contemplated preventing in the LMRDA." Id.


29. Id. at 67 (quoting Wirtz v. Hotel, Motel & Club Employees Union, Local 6, 391 U.S. 492, 499 (1968)).

30. Id. (quoting Hotel Employees, 391 U.S. at 499).

31. Id. (quoting Steelworkers, 429 U.S. at 308). Justice Brennan circumscribed the breadth of interests to be considered this way:

The LMRDA does not render unions powerless to restrict candidacies for union office. The injunction in § 401(e) that "every member in good standing shall be eligible to be a candidate and to hold office" is made expressly "subject to . . . reasonable qualifications uniformly imposed." But "Congress plainly did not intend that the authorization . . . of 'reasonable qualifications . . .' should be given a broad reach. The contrary is implicit in the legislative history of the section and in its wording . . . ."

Steelworkers, 429 U.S. at 308-09 (quoting Hotel Employees, 391 U.S. at 499) (alterations in original).

32. Letter Carriers, 965 F.2d at 66.
ance requirements, who are in good standing, who have held prior office, who have not applied for management positions, who are not retired or older than a certain age, or who have not been a union member for a required period of time. Federal district and appellate courts have taken a more restrictive approach to some regulations as opposed to others, creating uncertainty for unions seeking to impose reasonable restrictions and candidates seeking to exercise their democratic rights, as well as for the Secretary of Labor, upon whom rests a duty of enforcement.

This Comment examines and analyzes the nuances of post-Steelworkers approaches taken by circuit and district courts when applying the Hotel Employees/Steelworkers test to each type of regulation. This Comment then discusses whether the circuit and district courts have strayed too far from the Supreme Court's command that such restrictions not be given "broad reach." This Comment next surveys whether justifiable reasons exist for the courts to have strayed. The Comment then recommends adjustments in the Supreme Court's analysis which, if made, might more adequately serve the public policy goals that the LMRDA was enacted to protect. Also, in light of the Supreme Court's interpretation of the LMRDA that union elections should be modeled after democratic elections held in the United States, this Comment will analogize, where applicable, various union regulations with provisions of the United States Constitution that set reasonable requirements to serve in federal office.

33. See infra notes 87-106 and accompanying text.
34. See infra notes 107-26 and accompanying text.
35. See Hotel Employees, 391 U.S. at 492.
36. See infra notes 128-39 and accompanying text.
37. See infra notes 140-56 and accompanying text.
38. See infra notes 155-65 and accompanying text.
39. See supra note 9.
40. For a pre-Steelworkers analysis of Court decisions reviewing union candidacy restrictions, see generally, Thomas H. Barnard, Restrictions On the Right To Be A Candidate And Hold Union Office—The "Reasonable Qualifications" Exception in the Labor-Management Reporting and Disclosure Act, 18 WAYNE L. REV. 1239 (1972).
41. Issues surrounding the regulation of candidates seeking union office are particularly significant considering what Professor Jack Metzgar of the Labor Education Program at Roosevelt University calls "an outbreak of union democracy" throughout the United States. Richard Greer, Labor Unrest—In the Unions: Dissidents Challenging Leadership, ATLANTA J. & CONST., Mar. 25, 1993, at 1. "'[T]here are contested elections in local union after local union .... Any union incumbent who is running for union election really sweats it now." Id. (quoting Jack Metzgar). The reporter called this trend a "[g]rass-root rebellion." Id. Susan Jennik, a spokesperson for the Association For Union Democracy, points to the federal government's takeover of the International Brotherhood of Teamsters as a catalyst for the growth of rank-and-file activism throughout organized labor. See United States: Unions Face New Reform Movements, INTER PRESS SERV., Sept. 14, 1991 (quoting Jennik's statement: "'[J]ust the fact that there are challenges is remarkable. I see a big
This Comment concludes that while the test struck in Steelworkers has effectively served the LMRDA's goal of preserving society's and union members' interests in democratic unions, a more restrictive application of the Steelworkers test would further promote these societal interests while more clearly delineating interests of sufficient importance to unions and union autonomy—the protection of which a union may seek to regulate internally.

I. STRIKING A BALANCE BETWEEN COMPETING INTERESTS

A. Society's Legitimate Interest: "Free and Democratic Union Elections"

In Glass Bottle Blowers, Justice Brennan stated that because the end product of labor legislation often reflects political compromise, it is best to examine the LMRDA's legislative history "in the light of the general objectives Congress sought to achieve" rather than by attempting to discern a "literal reading."\(^{42}\) Similarly, Archibald Cox in his analysis of the LMRDA's legislative history cites that, because a large portion of the Act was formulated during House and Senate debate and "contain[s] calculated ambiguities or political compromises," one would do better to look to the "underlying rationale" of the LMRDA's provisions rather than the exact words utilized in each section to discern its true meaning.\(^{43}\)

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43. Archibald Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 842 (1960). Cox saw the LMRDA's purpose as follows:

The election of officers is the heart of union democracy. The policies of any large organization must be formulated and administered by a small group of officials. Their responsiveness to the members depends upon the frequency of elections, a fair opportunity to nominate and vote for candidates, and an honest count of the ballots.
These sources along with the Senate Report on the legislation, as well as interpretive court rulings, are clear in stating that achieving "free and democratic union elections" was Congress' primary societal goal in enacting Title IV of the LMRDA. Section 401(e) seeks to ensure that union members are free to participate in their organizations' democratic operation and self-government. Principles governing union election

The LMRDA establishes comprehensive requirements for the conduct of union elections.


45. Id. The Senate report points out that, under federal labor law, individual employees may not negotiate with an employer when a union has been chosen by a majority of fellow employees to represent the group in negotiations. Id. Individual employees are bound by the union contract. Id. Thus:

The Government which gives unions this power has an obligation to insure that the officials who wield it are responsive to the desires of the men and women whom they represent. The best assurance which can be given is a legal guaranty of free and periodic elections. The responsiveness of union officers to the will of the members depends upon the frequency of elections, and an honest count of the ballots. Guaranties of fairness will preserve the confidence of the public and the members in the integrity of union elections.

Id. In Trbovich v. United Mine Workers of America, 404 U.S. 528 (1972), the Supreme Court through Justice Marshall stated that Congress,

having conferred substantial power on labor organizations . . . began to be concerned about the danger that union leaders would abuse that power, to the detriment of the rank-and-file members. Congress saw the principle of union democracy as one of the most important safeguards against such abuse, and accordingly included in the LMRDA a comprehensive scheme for the regulation of union elections.

Id. at 530-31.

46. Trbovich, 404 U.S. at 530-31.
procedures were to be modeled after those utilized in public elections in the United States.\textsuperscript{47} Thus, under section 401(a)-(i) of the Act, unions are free to conduct elections without governmental interference so long as the elections conform to the procedures\textsuperscript{48} and principles outlined in the LMRDA.\textsuperscript{49}

B. Legitimate Interests of Unions: Control over Internal Affairs

In \textit{Hotel Employees},\textsuperscript{50} the Supreme Court noted that when Congress attempted to secure the public’s interest in democratic principles through the enactment of the LMRDA, it balanced the need to enforce those principles against a union’s right to conduct its own internal affairs.\textsuperscript{51} In instances where a union conforms to democratic principles, the government should not interfere with internal union affairs.\textsuperscript{52}

This interpretation is supported by the LMRDA’s legislative history. The Senate Report states that the committee handling the bill attempted

\textsuperscript{47} Wirtz v. Hotel, Motel & Club Employees Union, Local 6, 391 U.S. 492, 504 (1968).
\textsuperscript{48} See, e.g., Calhoon v. Harvey, 379 U.S. 134, 140 (1964). Justice Black succinctly summarized the procedures of LMRDA § 401(a)-(i):

Title IV sets up a statutory scheme governing the election of union officers, fixing the terms during which they hold office, requiring that elections be by secret ballot, regulating the handling of campaign literature, requiring a reasonable opportunity for the nomination of candidates, authorizing unions to fix “reasonable qualifications uniformly imposed” for candidates, and attempting to guarantee fair union elections in which all the members are allowed to participate.

\textit{Calhoon}, 397 U.S. at 140 (quoting LMRDA § 401(e), 29 U.S.C. § 481(e)).

\textsuperscript{49} Wirtz v. Local 153, Glass Bottle Blowers Ass'n, 389 U.S. 463, 471 (1968).
\textsuperscript{50} 391 U.S. 492 (1968).
\textsuperscript{51} Id. at 496.
\textsuperscript{52} Bottle Blowers, 389 U.S. at 470-71. The Court stated:

[LMRDA’s] legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs. . . . [Following debate] there emerged a “general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts.”

\textit{Id.} (quoting \textit{Calhoon}, 379 U.S. at 140) (footnote omitted). But see Donovan v. Illinois Education Ass’n, 667 F.2d 638 (7th Cir. 1982), where Judge Posner sought to limit the type of democratic principles reflected by Congress in the LMRDA. \textit{Id.} at 642. In rejecting a union’s contention that the bylaw in question was inherently reasonable because it had been approved by a vote of a majority of the union’s membership, the court stated: “Plebiscitary democracy is not the theory of the electoral provisions of the LMRDA.” \textit{Id. Compare id. with Martin v. Branch 419, Nat’l Ass’n of Letter Carriers, 965 F.2d 61, 65 (6th Cir. 1992) (undertaking a more limited inquiry in examining a bylaw passed by “democratically-elected members of [a] convention”). The court went on to state that the LMRDA does not require such an assembly to adopt measures “that a philosopher-king might find distasteful” nor for the courts to act as “super-delegates” at the convention. \textit{Id.}
to take "great care... not to undermine union self-government or weaken unions" in the field of collective bargaining. The committee recognized that union members are "fully competent" to run their own union. Congress also recognized, however, that the guise of a right to internal union management could be used to defeat individual members' rights to participate in union affairs and to further the personal cause of an entrenched leadership. In those instances, coercive governmental power must be applied.

Similarly, the Department of Labor's regulations relating to the enforcement of section 401(e) recognize union autonomy over its own inter-

53. Senate LMRDA Report, supra note 44 pt.2, at 7. The LMRDA's Senate Report stated explicitly: "[I]n establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents." Id. The exact parameters of what union actions and roles the committee meant to include within the terms "self-government" and "collective bargaining" is important because, implicitly, it defines what is most likely included within a union's legitimate interests, according to Congress. Hence, a union might justifiably seek to promote these interests as legitimate reasons for enacting restrictive candidacy requirements. What "role" unions play as agents of collective bargaining can be defined in a variety of ways. One author suggests that "[t]oday, it is widely accepted that collective bargaining is a union's primary function." Roger C. Hartley, The Framework of Democracy In Union Government, 32 Cath. U. L. Rev. 13, 50 (1982). The term includes "attempting to advance the economic welfare of bargaining unit members," the enhancement of employee job security, and efforts "to modify the work environment to make work psychologically more healthy." Id. at 52-53. Edgar James also identifies the primary function/collective bargaining theory. See James, supra note 9, at 250. James notes a second "systematic approach[es] to unionism," which emphasize a union's role in fostering "industrial peace, efficiency, and growth" as well as a third purpose of the union in being "responsive to membership demands above all." Id. at 252-53. Hence, union members, leaders and society—each from its own perspective—may identify the organization's core purpose, or role, in different ways. When these respective definitions as they relate to a candidacy regulation are in conflict, a challenge is likely to ensue—the legitimacy of which may turn on the court's perspective.

54. Compare Senate LMRDA Report, supra note 44 pt. 2, at 7 with Aaron, supra note 43, at 906. Aaron states that "[c]ontrary to the assumptions so often expressed by Congress, union members are frequently more radical and irresponsible than their leaders in the conduct of collective bargaining" and predicting that the LMRDA may result "in an increase of a primitive type of democracy, characterized chiefly by the disregard or overthrow of present leaders and the vigorous pursuit of collective-bargaining demands formulated by local majorities... The inevitable result will be more industrial strife, followed by more restrictive legislation." Id.

55. Hotel Employees, 391 U.S. at 497; see also Glass Blowers, 389 U.S. at 474 (stating that an "extensive congressional inquiry showing how incumbents' use of their inherent advantage over potential rank and file challengers established and perpetuated dynastic control of some unions" (citing S. Rep. No. 1417, 85th Cong., 2d Sess. (1958))).

56. See Senate LMRDA Report, supra note 44 pt. 2, at 7; see also Glass Blowers, 389 U.S. at 474 (stating that governmental involvement and supervision of union elections "reflects a conclusion that union members made aware of unlawful practices could not adequately protect their own interests through an unsupervised election").
nal affairs as being "legitimate." Nonetheless, these regulations state that the union's interest must be "closely scrutinized" to determine if members' and society's interest in preserving union democracy should supersede the union's interest.

II. WHEN LEGITIMATE INTERESTS COLLIDE: WHAT IS REASONABLE?

Where a union enacts a restrictive procedure or regulation that defeats society's and the membership's interest in democratic principles, the union regulation will be found unreasonable unless it is outweighed by the union's interest in running its own internal affairs. The Supreme Court, however, highlighted the fact that "Congress emphatically asserted a vital public interest in assuring free and democratic union elections that transcends the narrower interest" of the union.

A. Justice Brennan's Command in Steelworkers

Local 3489, United Steelworkers v. Usery provided the most recent

57. 29 C.F.R. § 452.35 (1992).
58. Id.
59. Id. The Regulation states in whole:
Qualifications for candidacy.

It is recognized that labor organizations may have a legitimate institutional interest in prescribing minimum standards for candidacy and office-holding in the organization. On the other hand, a dominant purpose of the Act is to ensure the right of members to participate fully in governing their union and to make its officers responsive to the members. A basic assumption underlying the concept of "free and democratic elections," is that voters will exercise common sense and good judgment in casting their ballots. In union elections as in political elections, the good judgment of the members in casting their votes should be the primary determinant of whether a candidate is qualified to hold office. Therefore, restrictions placed on the right of members to be candidates must be closely scrutinized to determine whether they serve union purposes of such importance, in terms of protecting the union as an institution, as to justify subordinating the right of the individual member to seek office and the interest of the membership in a free, democratic choice of leaders.

60. E.g., Wirtz v. Hotel, Motel & Club Employees Union, Local 6, 391 U.S. 492, 499 (1968).
63. 429 U.S. 305 (1977). The Supreme Court granted certiorari to resolve conflicting decisions between the Sixth and Seventh Circuits, concerning the meeting attendance rule of the international union. Id. at 307 n.3. The Sixth Circuit had upheld the union's meeting attendance rule, Brennan v. Local 5724, United Steelworkers, 489 F.2d 884 (6th Cir. 1973), while the Seventh Circuit had struck down the bylaw, Brennan v. Local 3489, United Steelworkers, 520 F.2d 516 (7th Cir. 1975), aff'd sub nom. Steelworkers, 429 U.S. at 305.
opportunity for the Supreme Court to interpret when a union regulation of any nature violates LMRDA section 401(e).\textsuperscript{64} The Steelworkers test is strict and compares the regulation's effect with the Act's purpose—conducting "free and democratic union elections."\textsuperscript{65}

In Steelworkers, the meeting attendance rule at issue disqualified 96.5\% of the local's members from running for union office by requiring a member to attend at least half of the union's monthly meetings over a three-year period to be eligible to seek office.\textsuperscript{66} The Court rejected the union's justifications for the rule and struck it down as being in violation of section 401(e).\textsuperscript{67} To the Court, the fact that the regulation did not further the cause of an "entrenched" leadership was of no consequence.\textsuperscript{68} Additionally, the Court found it unpersuasive that the rule was designed to encourage members to attend meetings.\textsuperscript{69} The Court rejected the

\textsuperscript{64} In International Organization of Masters, Mates & Pilots v. Brown, 498 U.S. 466 (1991), the Court reviewed the legislative considerations underlying the enactment of the LMRDA and § 401(e), but ultimately determined the case based on "the reasonableness of the candidate's request [under § 401(c) of the LMRDA] rather than on the reasonableness of the Union's rule [under § 401(e)]." \textit{Id.} at 475. Writing for the Court, Justice Stevens did, however, quote at length from \textit{Hotel Employees}. \textit{Id.} at 474-75.

\textsuperscript{65} \textit{Steelworkers}, 429 U.S. at 309 (citing \textit{Hotel Employees}, 391 U.S. at 504).

\textsuperscript{66} \textit{Id.} at 307. Out of an estimated 660 members whose activities placed them in good standing, only 23 members were eligible to seek elected office because of the rule. \textit{Id.} (citing the findings of the court of appeals in \textit{Brennan}, 520 F.2d at 516). Nine of the 23 members eligible were current officers. \textit{Id.} at 307-08. Because members were required to attend half of the monthly meetings held over a three-year period, members who wished to become a candidate were required to protect their viability at least 18 months before the election. \textit{Id.} at 308. Sufficient reason to run for office might not appear until closer to the election, the Secretary of Labor argued. \textit{Id.} Thus, the Secretary stated that the effect of the rule was to prevent democratic elections from occurring. \textit{Id.}

\textsuperscript{67} \textit{Id.} at 311. The Court noted that interest in running for office likely peaks shortly before an election is held; those members whose interest is piqued for whatever reason less than 18 months before the election would be prohibited from running. \textit{Id.} The Court found that a union member's ability "to oust incumbents in favor of new leadership" was impaired by this requirement. \textit{Id.}

\textsuperscript{68} \textit{Id.} at 309 (stating that the LMRDA was enacted to combat "abuse by benevolent as well as malevolent entrenched leadership" (citing \textit{Hotel Employees}, 391 U.S. at 503)). Moreover, the Court stated:

The reasons for leaderships becoming entrenched are difficult to isolate. The election of the same officers year after year may be a signal that antidemocratic election rules have prevented an effective challenge to the regime, or might well signal only that the members are satisfied with their stewardship . . . . [For this reason], Congress chose to guarantee union democracy by regulating not the results of a union's electoral procedure but the procedure itself. . . . Procedures that unduly restrict free choice among candidates are forbidden without regard to their success or failure in maintaining corrupt leadership. \textit{Id.} at 311-12.

\textsuperscript{69} \textit{Id.} at 312. The Court pointed out, in fact, that the rule had failed to achieve that desired goal. \textit{Id.} On average, 47 of the local's approximately 660 members attended each meeting. \textit{Id.} at 312 n.8.
union’s argument that the rule was reasonable because, by his or her own efforts, a member could ensure that he or she was not denied an opportunity to seek union office.\textsuperscript{70} Finally, in the face of so many union members being precluded from officer candidacy, the Court rejected as unsubstential the union petitioner’s interest in ensuring more qualified leaders.\textsuperscript{71} In light of the interests posited by the union and its restrictive effect on union democracy as evidenced by the percentage of union members disqualified by the rule, the Court struck down the bylaw because of its restrictive effect on democracy.\textsuperscript{72}

Statistical considerations are a strong factor that may lead the Secretary or a court to determine that a regulation is unreasonable.\textsuperscript{73} Although no court has ever applied a per se effects\textsuperscript{74} analysis of section 401(e),\textsuperscript{75} at some point, “the oppressive nature” of a union’s qualification restriction becomes “evident.”\textsuperscript{76} Or, as stated in \textit{Steelworkers}, that point

\begin{itemize}
\item \textsuperscript{70} \textit{Id.} at 310. The union had attempted to differentiate the meeting attendance rule at issue here with that struck down in \textit{Hotel Employees} on the ground that the union members in \textit{Steelworkers}, through their own efforts, preserved their viability as future candidates. \textit{Id.; see supra} note 11. “Even examined from this perspective . . . the rule has a restrictive effect on union democracy.” \textit{Steelworkers}, 429 U.S. at 310. The eligibility rule is to be judged “not by the burden it imposes on the individual candidate but by its effect on free and democratic processes of union government.” \textit{Id.} at 311 n.6
\item \textsuperscript{71} \textit{Steelworkers}, 429 U.S. at 312. According to the Court, Congress considered democratic elections, “unfettered by arbitrary exclusions,” to be the best means for ensuring that qualified leaders were elected. \textit{Id.} “Pursuing this goal by excluding the bulk of the membership from eligibility for office, and thus limiting the possibility of dissident candidacies, runs directly counter to the basic premise of the statute.” \textit{Id.}
\item \textsuperscript{72} \textit{Id.} at 313-14.
\item \textsuperscript{73} \textit{Id.} at 310.
\item \textsuperscript{74} A “per se” effects rule would examine the statistical percentage of members eliminated from becoming a candidate for union office and, whenever the rule disqualifies a vast majority of the membership, judge it unreasonable. \textit{See id.} at 315 (Powell, J., dissenting); \textit{see also} \textit{BLACK’S LAW DICTIONARY} 1142 (6th ed. 1990).
\item \textsuperscript{75} \textit{But see Steelworkers}, 429 U.S. at 315 (stating that the majority nonetheless came close to applying a per se analysis in this case). As Judge Edwards explains, the issue is more than just semantical. \textit{See} Harry T. Edwards, \textit{The Coming of Age of the Burger Court: Labor Law Decisions of the Supreme Court During the 1976 Term}, 19 B.C. L. Rev. 1 (1977). A percentage-based per se test would have the effect of striking down all union restrictions when a certain percentage of union members are disqualified, no matter what union interest was cited in support of the rule. \textit{Id.} at 57. With respect to meeting attendance rules, in particular, a per se rule would essentially strike down every attempt by a union to regulate in this way because of “[t]he low level of interest in ordinary, day to day union business.” \textit{Id.} at 58. As Judge Edwards states, therefore, it “is not hard to fathom” why a majority of Justices in \textit{Steelworkers} declined to utilize such a test. \textit{Id.} at 57.
\item \textsuperscript{76} \textit{Wirtz v. International Union of Operating Eng’rs}, 254 F. Supp. 962, 963-66 (E.D. La. 1966). The court struck down restrictive regulations that required a candidate to be a member of the parent local, to have paid monthly dues “on or before the first day of each month during the year preceding,” and to have been a member in good standing for at least five years prior to the election. \textit{Id.} at 964. Only 104 of the local’s 3137 members satisfied the union’s candidacy requirements. \textit{Id.} at 965.
\end{itemize}
is reached when the "result obviously severely restricts the free choice of the membership in selecting its leaders."77 At that point, the balance has been tilted in favor of the complaining union member, and the regulation must be struck down.78

Dissenting from the Court’s holding in Steelworkers, Justice Powell was disturbed by the majority giving "controlling weight" to the percentage factor.79 Justice Powell and two other Justices would have upheld the meeting requirement rule because it was not inherently or predictably restrictive; the rule only disqualified the vast majority of members after they failed to protect their own viability.80 In addition, the dissent differed with the majority’s analysis, which did not consider the interests cited by the union to be legitimate.81

Subsequent courts have often given statistical analyses persuasive, if not determinative, weight. While one pre-Steelworkers court found a regulation to be unreasonable when more than 87% of a union’s member-

77. Steelworkers, 429 U.S. at 310 (majority opinion).
78. Id.
79. Id. at 315 (Powell, J., dissenting). Justice Powell admitted that the majority’s opinion did not adopt a per se effects rule but complained that, by relying too heavily on the Court’s decision in Hotel Employees, “it comes close to doing so.” Id. He differentiated the rule at issue in Hotel Employees from that at issue in Steelworkers because the rule does not work to entrench union leadership. Id. That effect was “predetermined,” and a “purposeful and inevitable effect of the structure of the [prior office holding] rule itself,” in Hotel Employees when the union’s leadership enacted the requirement. Id. at 315-16. Justice Powell found that this was not so in regard to the meeting attendance rule in Steelworkers. Id.
80. Id.
81. Id. Judge Edwards believes that a broader area of philosophical disagreement is at play here than that evidenced on the face of the majority and dissenting opinions. See Edwards, supra note 75, at 58-59. Justice Powell, in voting to uphold the meeting attendance rule, sought to preserve stability in labor-management relations through the established union leadership. Id. at 58. “Justices Powell, Stewart and Rehnquist fear [that striking down the rule] may tend to disrupt industrial stability by putting more locals into the hands of militant leaders who will be much less compromising in their economic demands.” Id. at 59. Justice Brennan, on the other hand, sought to “make it easier for temporarily aroused union members to displace established leadership.” Id. at 58. Judge Edwards’ analysis elaborates on the distinctions drawn by Edgar James in detailing three different schools of thought as to what core functions unions play in society and members’ lives. See James supra note 53. If Judge Edwards is correct, the dissenting Justices in Steelworkers interpret § 401(e)’s “reasonable qualifications uniformly imposed” guidelines to grant union leadership with a wide latitude of discretion because unions’ primary role is to stabilize labor-management relations. LMRDA § 401(3), 29 U.S.C. § 481(e) (1988).
They are concerned with union autonomy only to the extent it promotes that goal. Cf. Steelworkers, 429 U.S. at 317 (Powell, J., dissenting) (stating that whether a sufficient nexus exists between the meeting attendance rule at issue and the goals it seeks to promote “is a ‘judgment call’ best left to the unions themselves.”) But cf. Edwards, supra note 75, at 59 (indicating that the Steelworkers majority sees the statute’s purpose founded in “opening-up” the union political process and “encouraging democracy within the union”).
ship was kept from participating in an election, a post-Steelworkers court upheld a similar union regulation that prevented at least 74% of the union's members from seeking union office when the union was forced to do so by law. Most courts in recent decisions, however, have struck down regulations preventing 80%, and even as low as 60%, of a union's members from running for election. One court recently let stand a union regulation that effectively prohibited one out of six members from running for union office.

B. Meeting Attendance Requirements

It is in the area of meeting attendance requirements that courts appear to have most consistently followed the Steelworkers directive that union regulations not be given "broad reach." Just three years after Steelworkers, the United States Court of Appeals for the Fifth Circuit in Marshall v. Local 1402, International Longshoremen's Ass'n struck down a union regulation requiring that members attend at least one meeting each month for twelve consecutive months to be eligible to seek union office. The regulation differed from that examined in Steelworkers in at least two material respects. First, rather than having to attend eighteen monthly union meetings within a three-year period, members were only required to attend twelve union meetings, one each month, within twelve months; second, the Longshoremen's regulation provided a liberal excuse provision—a member need only call into the local union's office prior to the

82. See Wirtz v. Local 9, Int'l Union of Operating Eng'rs, 254 F. Supp. 980, 982 (D. Colo. 1965), aff'd, 366 F.2d 911 (10th Cir. 1966), vacated, 387 U.S. 96 (1967). The union regulation required that members intending to seek union office must have paid all union quarterly dues prior to the preceding year's due date. Id. at 982. Both the district and appeals courts struck down the regulation because it excluded approximately 87% of the membership from running for union office. The Supreme Court vacated the judgments as moot. Operating Engineers, 387 U.S. at 96.

83. See Donovan v. Local 500, Transp. Workers Union, 111 L.R.R.M. (BNA) 2499 (S.D. Fla. 1982). A union of 418 members was required by statute to hold elections in one year. Within that period, the union acquired more than 1200 additional members through an airline merger. Those 1200 members were not eligible to run for union office in the upcoming election because of a union regulation requiring 12 continuous months of good standing.


86. Dole v. Aluminum, Brick, and Glass Workers Int'l Union, Local 200, 941 F.2d 1172 (11th Cir. 1991).

87. 617 F.2d 96 (5th Cir.), cert. denied, 449 U.S. 869 (1980).

88. Id. at 97. The union conducted two such regular meetings monthly. Id.
meeting to obtain an excused absence. Accepting that the burden on members was slighter to some degree than that imposed upon members in *Steelworkers*, the court nonetheless was unpersuaded that the rule withstood analysis. In the court's view, the liberal excuse provision actually undermined any legitimate purpose that the rule might have had—to ensure a more informed membership. Moreover, the fact that 93.7% of all members were ineligible to run for union office because of the regulation rendered it undemocratic. The reasoning set forth in *Steelworkers* controlled.

In *Donovan v. Pennsylvania Optical Workers Ass'n*, a Pennsylvania federal district court also refused to give "broad reach" to a union's regulation that required members to attend at least two-thirds of monthly union meetings held within a twelve-month period. No attendance records beyond the memories of current union officers were kept, and members were considered to have attended if they had been excused from the meeting ahead of time. To be excused, members were required to contact the union's office before the meeting was held. Moreover, every union member received attendance credit for the period's first two months. In contrast, the district court in an unreported opinion granted summary judgment to the union after finding these factors adequate to distinguish the rule from *Steelworkers*. Id.

Quoting *Steelworkers*, the court rejected the union's argument that the burden placed on members was minimal compared to *Steelworkers*: "[T]his argument misconceives the evil at which the statute aims. We must judge the eligibility rule not by the burden it imposes on the individual candidate, but by its effect on free and democratic processes of union government." Id. (quoting Local 3489, United Steelworkers v. Usery, 429 U.S. 305, 310-11 n.6 (1977)).

The court opined that "the only purposes for the rule having evaporated, we are left with a rule which serves no demonstrable purpose, but which, on the other hand, significantly limits eligible candidates and imposes a substantial adverse effect on the democratic process." Id. at 99. The court stated:

"Where the legitimate purposes served by the rule are weak at best, where a potential candidate must formulate his intention to run ten months in advance of the election, and where the impact of the rule is to render ineligible 93.7% of the union membership, we hold that the "the antidemocratic effects of the meeting attendance rule outweigh the interests urged in its support.""

Another union rule required every candidate to have been a member of the union for at least five years. Id. at 194. The Secretary initially sought to strike down this provision until it was discovered that every member of the local union met the requirement. Id. at 195 n.1.

5. According to the district court's factual findings, the union's recording secretary reconstructed attendance lists by "poll[ing] all the current union officers." Id. at 194. Although no records of attendance were recently kept, in previous years the union had used a sign-in sheet to keep track of membership at meetings. Id. Considering these facts, the Court found it "incredible" that the union would argue in support of the bylaw's validity. Id. at 196. The "collective recollection of current officeholders" to "reconstruct" the attendance records was unreliable in light of testimony demonstrating one witness'
more than 80% of the union's members were disallowed from running for office because of the union regulation.\textsuperscript{96} The court rejected the union's contention that the rule legitimately sought to ensure candidate familiarity with union issues.\textsuperscript{97} Citing the holding in Steelworkers, the court stated that free elections adequately guaranteed that goal.\textsuperscript{98}

The United States Court of Appeals for the District of Columbia Circuit in Doyle \textit{v.} Brock\textsuperscript{99} struck down a rule that required members to attend six of twelve monthly union meetings within a twelve-month period.\textsuperscript{100} The rule eliminated 97\% of its members from having the opportunity to seek office.\textsuperscript{101} Citing at length from Steelworkers, the court held the rule's antidemocratic effects outweighed the interests posited in support of the regulation by the union.\textsuperscript{102} The court rejected the Secretary of Labor's explanations for refusing to bring suit in the matter.\textsuperscript{103} The court noted that, although Steelworkers did not apply a per se analysis, the fact

\textsuperscript{96} Id. Of the local's 150 members, just 16 (excluding eight present officers) were eligible to become candidates. \textit{Id.} at 194. According to the district court's factual findings, meetings were not held on a regular date each month, but were held irregularly. \textit{Id.} At times, a full month would pass without a single meeting being held. \textit{Id.}  

\textsuperscript{97} Id.  

\textsuperscript{98} Id.  

\textsuperscript{99} 821 F.2d 778 (D.C. Cir. 1987). This case was actually the third of three actions brought by the plaintiff against the Secretary of Labor. In Doyle \textit{v.} Brock, 632 F. Supp. 256 (D.D.C. 1986), suit was brought because the Secretary chose not to pursue a complaint of a union member. \textit{Id.} at 258. The Secretary was ordered to supply the court with a supplemental accounting as to why enforcement of the Act was not sought. \textit{Id.} at 263. In Doyle \textit{v.} Brock, 641 F. Supp. 223 (D.D.C. 1986), \textit{aff'd}, 821 F.2d 778 (D.C. Cir. 1987), the district court held that the Secretary's reasons for not enforcing the Act were deficient. \textit{Id.} at 227. The court ordered the Secretary either to enforce the Act or appeal the District Court's decision. \textit{Id.}  

\textsuperscript{100} Doyle, 821 F.2d at 780. Only members who signed the meeting's registrar were credited for being present at the meeting. \textit{Id.} The complaining union member claimed that, although he did not always sign the registrar, he had attended other union meetings but received no credit. \textit{Id.}  

\textsuperscript{101} \textit{Id.} at 784. A vast percentage of the union's membership was prohibited by the rule from becoming a candidate in spite of excuse provisions providing that members could receive a meeting attendance credit by contacting the union's executive board within 30 days after the meeting was held. \textit{Id.} at 780 n.1.  

\textsuperscript{102} \textit{Id.} at 783. The rule should be judged "not by the burden it imposes on the individual candidate but by its effect on free and democratic processes of union government" and whether "the anti-democratic effects of the . . . rule outweigh the interests urged in its support." \textit{Id.} at 784-85 (quoting Local 3489, United Steelworkers v. Usery, 429 U.S. 305, 310 (1977)) (emphasis in original).  

\textsuperscript{103} \textit{Id.} at 784. The Secretary argued that, in contrast to the rule in Steelworkers, the rule at issue in Doyle—requiring attendance at just six meetings over a 12-month period—was easier to meet. \textit{Id.} He further argued that the excuse provisions at issue in Doyle were more liberal than those at issue in Steelworkers. \textit{Id.} Both arguments were rejected by the court of appeals. \textit{Id.}
that 96.5% of members were discriminated against received at least “‘controlling weight.’” Weighing the rule’s antidemocratic effects against the interest posited by the union—encouraging membership participation—the court of appeals struck down the rule because it did not serve a valid union interest.

Dissenting, Judge Silberman noted that Steelworkers, at least implicitly, left open the possibility that a union bylaw that did not strictly limit a potential candidate’s ability to run for union office shortly before an election might be found reasonable.

B. Good Standing: Dues Payment

In contrast to interpretations of section 401(e) in the area of meeting attendance requirements, two cases subsequent to Steelworkers relating to restrictive dues payments seem to indicate that some courts have strayed from the command that union regulations not be given broad reach. The United States Court of Appeals for the Fourth Circuit in Brock v. International Organization of Masters, Mates and Pilots reviewed a union regulation that disqualified union members from seeking office when they failed to pay quarterly union dues on a timely basis for

104. Id. at 785 (quoting Steelworkers, 429 U.S. at 315 (Powell, J., dissenting)). The court of appeals derided the Secretary for arguing that “‘the Local's requirement . . . is not stringent or uncommon among unions, nor is the impact unusual and that [it] is probable that many, if not most, existing meeting attendance rules would be found unreasonable if tested by impact alone.’” Id. at 784 (quoting Supplemental Statement of Reasons at 15) (alterations in original). To those arguments, the court responded:

We do not understand why the typicality of a requirement that has a large antidemocratic effect somehow makes it a reasonable requirement under the LMRDA. “Whether a particular qualification is 'reasonable' within the meaning of § 401(e) must . . . 'be measured in terms of its consistency with the (LMRDA's) command to unions to conduct 'free and democratic' union elections.'” Id. at 784 n.5 (quoting Steelworkers, 429 U.S. at 309 (quoting Wirtz v. Hotel, Motel & Club Employees Union, Local 6, 391 U.S. 492, 499 (1968))).

105. Id. at 784. The court noted that Steelworkers itself is cited approvingly in the Department of Labor's regulations. Id. at 785. Many of the interests posited by the Secretary in support of the union bylaw were rejected in Steelworkers, and so they must also be rejected here. Id. at 785-86.

106. Id. at 788 (Silberman, J., dissenting). “‘[M]ember interest in changing union leadership is likely to be at its highest only shortly before the election.’” Id. (quoting Steelworkers, 429 U.S. at 311). Judge Silberman suggested that a bylaw requiring a member to attend six meetings in 12 months “might stand on surer footing” and might adequately secure a member’s right to run for union office because members with an interest in running would have more time to decide before being precluded by the bylaw. Id. The distinction, Judge Silberman believed, robbed the majority of the “precise and binding precedent” necessary to overturn the Secretary of Labor’s decision not to bring suit under the LMRDA. Id.

107. 842 F.2d 70 (4th Cir. 1988).
twenty-four months prior to being nominated for office. The court rejected the Secretary of Labor’s claim that the provision violated section 401(e). Examining the rule’s antidemocratic effect, the court of appeals upheld the district court, which found that only 10% of all union members were disqualified by the rule. The court of appeals noted that no evidence existed that the rule was enacted to benefit an entrenched leadership or that it disqualified a large percentage of members. The district court had found the members’ failure to pay dues was not a result of conditions beyond their control, such as seasonal unemployment. The court also noted that the elections were “vigorously contested” and that waivers did exist for members who were outside the country or who were ill.

The United States Court of Appeals for the Eleventh Circuit applied a similarly broad standard in *Department of Labor v. Aluminum, Brick & Glass Workers International Union, Local 200.* One out of six union members was disqualified from seeking office and voting because of their failure to pay strike assessment fees, which eliminated them from the union’s good standing rolls. To run for union office, a person had to

108. *Id.* at 71.

109. *Id.* at 73. The Secretary argued that the bylaw was unreasonable because no excuse provisions existed by which a member could maintain a condition of good standing. *Id.* at 71. The court rejected this interpretation of reasonableness, and accused the Secretary of applying a “per se rule, without reference to the circumstances of the particular union.” *Id.* at 72.

110. *Id.* at 73

111. *Id.* (stating that the rule did not “detract[] from the union’s democratic process, either by operating to the advantage of an entrenched leadership, or by disqualifying a majority of the membership from holding office”). The rule disqualified 700 members who, but for the good standing requirement, would otherwise have been qualified to seek union office. *Id.*

112. *Id.* Had seasonal employment conditions made payment of dues difficult, the court might have considered that factor in judging the regulation’s negative effect on union democracy. *Id.; see also* Beaird, *supra* note 41, at 1322 (citing Wirtz v. Local 9, Int’l Union of Operating Eng’rs, 254 F. Supp. 980 (D. Colo. 1965), aff’d, 366 F.2d 911 (10th Cir. 1966), vacated, 387 U.S. 96 (1967)). Beaird points to conditions in the maritime industry, with “cycles of substantial unemployment,” as one industry where a bylaw, which otherwise might seem reasonable, might be struck down by a court as unreasonable. *Id.* at 1322-23.

113. Masters, Mates and Pilots, 842 F.2d at 73

114. *Id.*


116. *Id.* at 1179. Fifty members of the union, Local 200 of the Aluminum, Brick and Glass Workers International Union, were engaged in a strike against the Muscle Shoals Minerals Company in Tuscumbia, Alabama. *Id.* at 1174. The international union’s bargaining committee voted to assess a $25 weekly strike fee on 200 of the local’s members employed at the Reynolds Metals Company in Listerhill. *Id.* The fee would be assessed until the strike had ended. *Id.* Because some members were to pay the strike assessment
have been a member in good standing for the prior thirty-six months.\textsuperscript{117} In the subsequent election, nominators and candidates were disqualified because of the regulation.\textsuperscript{118} While the court found the situation "troubling"\textsuperscript{119} because the defect could not be cured in the months leading up to candidate nominations,\textsuperscript{120} nonetheless it assumed that members, who were provided with a copy of their union’s constitution before joining, knew the union’s rules on candidate eligibility.\textsuperscript{121} Although the court noted that candidates received no notice of the consequences of not paying the strike dues, it did not believe that the union’s failure to provide notice had a substantial antidemocratic effect on the election.\textsuperscript{122}

Unlike the Masters, Mates and Pilots court, the Eleventh Circuit quoted the reasoning in Steelworkers—including Justice Brennan’s "broad reach" admonition.\textsuperscript{123} But the court also focused on Justice Brennan’s statement that section 401(e) "does not render unions powerless to restrict candidacies for union office."\textsuperscript{124} The court stated that an "important factor" to consider in determining the reasonableness of a regulation was its "impact on the election."\textsuperscript{125} Although a change in the election’s outcome might have occurred if all members eliminated from participation had voted against the victorious candidate, the court noted the number excluded from nominating or being candidates was unlike those associated with bylaws struck down in other instances.\textsuperscript{126}

\textsuperscript{117} Reynolds forwarded just $75 of the $125 that would eventually be due. \textit{Id.} The strike lasted five weeks. \textit{Id.} Some 400 members never paid the full amount. \textit{Id.} at 1175. According to the union's constitution, members who fell more than two months behind in dues payments and other obligations would not be considered members in good standing. \textit{Id.} Four nominations for union candidacy were declared invalid because of the constitutional bylaw and two union members filed a complaint. \textit{Id.}

\textsuperscript{118} Of the four nominations voided because of the regulation, two members were disqualified because their nominators did not meet the union's good standing criteria. \textit{Id.} at 1175 n.6. Two other members were disqualified based on their own failure to maintain their good standing due to the strike assessment provisions. \textit{Id.}

\textsuperscript{119} at 1179 (stating that "the issue of exclusion based on the strike assessment [did not become] certain [until] . . . the months before the nominations [; by then], it was too late to cure the defect").

\textsuperscript{120} \textit{Id.}
\textsuperscript{121} \textit{Id.} at 1180.
\textsuperscript{122} \textit{Id.} The court found: "Although [the candidates] did not receive specific notice of the consequences of default, which the voters did, we cannot say that their exclusion based on the failure to pay a strike assessment within a certain time period had such an antidemocratic effect on the election that a new one is warranted." \textit{Id.}

\textsuperscript{123} \textit{Id.} at 1177.
\textsuperscript{124} \textit{Id.} (quoting Local 3489, United Steelworkers v. Usery, 429 U.S. 305, 308 (1977).
\textsuperscript{125} \textit{Id.} at 1179.
\textsuperscript{126} \textit{Id.} (stating that the percentage of members eliminated were "not of the magni-
D. Management Job Applications

Federal courts have split on the issue of whether a union bylaw that prohibits members who have sought management positions within the company from seeking union office for two years thereafter is reasonable.\(^{127}\) In *McLaughlin v. American Postal Workers Union*,\(^{128}\) a federal district court struck down the union bylaw.\(^{129}\) The court specifically cited *Steelworkers* for the proposition that one goal of section 401(e) was to prevent the entrenchment of union leadership.\(^{130}\) With that in mind, the court derided the union for limiting union candidacy to those members who shared a single philosophy of union governance.\(^{131}\) According to the court, the union demonstrated no legitimate interest in preventing one who has applied for a management position within a two-year period from holding office.\(^{132}\) Such a provision, the court found, prevents the full exercise of union democracy.\(^{133}\)

In contrast, the United States Court of Appeals for the Sixth Circuit, reviewing an identical union bylaw in *Martin v. Branch 419, National Ass'n of Letter Carriers*,\(^{134}\) found the prohibitive bylaw to be a reasonable exercise of union autonomy.\(^{135}\) Citing *Steelworkers* and *Hotel Employees* usually associated with the substantial anti-democratic effect of unreasonable qualifications.

\(^{127}\) See supra notes 25-32 and accompanying text.


\(^{129}\) Id. at 1522. The court characterized the bylaw as a “patently unreasonable limitation of eligibility [and] exactly what Congress contemplated preventing” through enactment of § 401(e). *Id.* The candidate, seeking the office of clerk craft president, was not prevented from seeking office; he was removed after he had been elected. *Id.* at 1520. The losing candidate protested the election based on the union restriction as stipulated in the union’s constitution. *Id.* The removed candidate was aware of the union’s rule as a candidate but chose to run anyhow. *Id.*

\(^{130}\) Id. at 1522.

\(^{131}\) Id. The union argued that the position of clerk craft president required a member who would not be subject to a conflict of interest. *Id.* at 1521. A candidate who applied for a management position within the stipulated period of time might be incapable of representing rank-and-file members in negotiations with management. *Id.* The court rejected this argument. *Id.* at 1522. The court called it a “natural function of the nearly universal desire of self-advancement” that an employee would apply for a management position. *Id.* The union’s theory would preclude any member with goals of advancing to management from representing the union as clerk craft president. *Id.* Such grounds for disqualification, the court found, were so “speculative” as to be “patently unreasonable and, in fact, disingenuous.” *Id.* Further, the court analogized that “entrenching oneself [as an officer] and entrenching only those who share one’s specific philosophy of union management” is the type of conduct that the LMRDA was enacted to prevent. *Id.*

\(^{132}\) Id.

\(^{133}\) Id. (stating that the regulation “unnecessarily impinges upon the ‘broadest possible participation in union affairs’”).

\(^{134}\) 965 F.2d 61 (6th Cir. 1992).

\(^{135}\) Id. at 65. The court stated:
ees, the court noted that the regulation in question would not eliminate a substantial percentage of members from running for union office. After examining the record of the union’s convention during which the bylaw was enacted, the court determined that it was not enacted at the insistence of an entrenched leadership. Finally, the court stated that it found the reasoning of the district court in American Postal Workers Union to be unpersuasive. The court concluded that the regulation was not inconsistent with the LMRDA’s command, as interpreted in Steelworkers, “‘to conduct “free and democratic” union elections.’”

E. Restrictions Imposed upon Retirees

Two federal district courts have passed judgment on union bylaws that attempted to restrict candidacies for union office to members who have not retired. In both cases, the courts stringently applied the Steelworkers reasoning.

In Donovan v. Local 25, Sheet Metal Workers, the United States Dist-

[T]he Landrum-Griffin Act was intended, first and foremost, to promote democracy. Democratic assemblies often adopt measures that a philosopher-king might find distasteful, just as they often fail to adopt measures that a philosopher-king would embrace without hesitation. Our role, as we see it, is . . . [to determine] whether the choice made by the democratically-elected members of the convention can be defended as ‘reasonable.’ We have little doubt that this particular choice can properly meet that standard.

136. Id. The Secretary of Labor believed that only a small, albeit unstated, percentage of members were affected by the bylaw. Id.

137. Id. In reaching this conclusion, the court examined transcripts from the union’s recent constitutional convention, which indicated that the union’s national leadership had actually opposed the regulation when initially offered. Id. The proposal actually emanated from a delegate, which according to the court was met with support from other delegates. Id.

138. Id. at 61, 66 n.3. Still, the court went on to imply that the adoption of the regulation, in light of types of candidates being restrained from participating as officers in the union, was unwise. “[T]he unions [referring both to the letter carriers and the postal workers organizations] would have been better advised to reject these measures. [The plaintiff], for example, appears from his application form to be the sort of individual who would make a fine union officer.” Id. at 65.

139. Id. at 67 (quoting Local 3489, United Steelworkers of Am. v. Usery, 429 U.S. 305, 390 (1977) (quoting Wirtz v. Hotel, Motel and Club Employees Union, Local 6, 391 U.S. 492, 499 (1968))). The court further stated:

Where a union adopts a qualification for office that may reflect a conflict between the interest of rank-and-file union members in participating fully in the operation of their union and the interest of an entrenched union leadership in perpetuating its own control, the statutory phrase “reasonable qualifications uniformly imposed” should be interpreted, if possible, in such a way as to vindicate the former interest in preference to the latter.

District Court for the Eastern District of Tennessee struck down a bylaw that prohibited retirees from seeking union office.\textsuperscript{141} The court rejected the union's argument that retired members would be more likely to lose interest in union affairs and thus would be less likely to run the union effectively.\textsuperscript{142} Noting that the Supreme Court addressed a nearly identical concern in \textit{Steelworkers}, the district court stated that the LMRDA's provisions were the best means of ensuring the election of qualified leaders.\textsuperscript{143} Members were capable of making that determination at the ballot box.\textsuperscript{144} The bylaw "is strongly at odds" with the goal of free and democratic elections, the court concluded, determining that the plaintiff's candidacy might have altered the election's results.\textsuperscript{145} The court ordered the local union to conduct new elections.\textsuperscript{146}

Similarly, in \textit{Dole v. American Federation of State, County, and Municipal Employees},\textsuperscript{147} the United States District Court for the District of Columbia rejected a union bylaw that restricted high union office to union members who were younger than sixty-five years of age.\textsuperscript{148} The union defended the bylaw on two grounds. First, the union stated that the regulation ensured that the composition of union leaders would be similar to the composition of the membership. Second, the regulation affected only a small portion of union members.\textsuperscript{149} The Secretary of Labor challenged the regulation because she believed that union members could decide for themselves whether a candidate of any age was capable of leading the

\begin{footnotesize}
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\item \textsuperscript{141} \textit{Id.} The sheet metal worker challenging the rule retired in 1982. \textit{Id.} at 608. Nearly two years later, the plaintiff ended his retirement and began working again. \textit{Id.} The complainant petitioned the union’s general president for an interpretation of the union’s constitutional provisions relating to eligibility, and the union’s response declared his status as a former retiree prohibited him from holding office. \textit{Id.} Although the union’s constitution specifically denied retirees the right to run as a candidate, it made no specific mention of members who “unretire.” \textit{Id.} at 609.
\item \textsuperscript{142} \textit{Id.} The union argued that retired members would “have the potential of losing interest” in union matters and, therefore, would be less likely to serve as effective officers. \textit{Id.}
\item \textsuperscript{143} \textit{Id.} at 610 (paraphrasing language from Local 3489, United Steelworkers v. Usery, 429 U.S. 305, 309 (1977)).
\item \textsuperscript{144} \textit{Id.} The court stated that, “the goal of the LMRDA is to permit the union membership to determine whether a candidate is a good leader.” \textit{Id.} at 609. The court observed that “[t]he Supreme Court noted that the congressional purpose was modeled after the assumptions governing the general political system,” which “‘assumes that voters will exercise common sense and judgment in casting their ballots.’” \textit{Id.} at 610 (quoting Wirtz v. Hotel, Motel and Club Employees Union, Local 6, 391 U.S. 492, 499 (1968)).
\item \textsuperscript{145} \textit{Id.} at 610.
\item \textsuperscript{146} \textit{Id.} at 611.
\item \textsuperscript{147} 715 F. Supp. 1119 (D.D.C. 1989).
\item \textsuperscript{148} \textit{Id.}
\item \textsuperscript{149} \textit{Id.} at 1120.
\end{itemize}
\end{footnotesize}
While the Secretary failed to demonstrate numerically how many members were adversely affected by the bylaw, the court stated that the magnitude of the effect was not at issue. The more important issue was whether every member in good standing within the union had the opportunity to run for union office, pursuant to the command of section 401(e) of the Act. Citing Steelworkers, the court stated that the union's regulations were not to be given broad reach.

The court found no connection between a person's age and his or her ability to run a union, particularly in light of federal laws protecting against age discrimination. Moreover, the court found no connection between a person's age and the likelihood that corruption might occur—one of the ills that the LMRDA was enacted to prevent. A new elec-

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150. *Id.* The Labor Department argued that such a broad exclusion was unnecessary, and that "members are competent to choose, by their votes, to throw out those officers who are 'unrepresentative' of the union electorate." *Id.*

151. *Id.* The union argued that only 2.8% of its members, retirees, were affected by the bylaw. *Id.* But the court responded, "it is not the magnitude of the effect at issue, but whether or not the election conforms to § 481(e)'s requirement that 'every member in good standing shall be eligible to be a candidate and to hold office (subject to § 504 of this title and to reasonable qualifications uniformly imposed).'" *Id.* (quoting 29 U.S.C. § 481(e) (1988)).

152. *Id.*

153. *Id.* at 1121.

154. *Id.* A union may not enact bylaws that are inconsistent with the Age Discrimination in Employment Act of 1967. *Id.* at 1120 n.1 (citing 29 C.F.R. § 452.46). Compare this case with Donovan v. Laborers' International Union, 683 F.2d 1095 (7th Cir. 1982), where a similar competency bylaw was struck down by the Seventh Circuit. *Id.* at 1105. The bylaw attempted to limit candidacies for the local union's office of secretary-treasurer to members considered "'competent to perform the duties of the office.'" *Id.* at 1102 (quoting 29 U.S.C. § 482(e)). One criteria measuring competency in the bylaw was that candidates for office must be literate. *Id.* at 1104. The court struck down the bylaw because it was "vague" and did not give "notice of the specific standards" required to potential candidates. *Id.* at 1103. The court compared competency requirement to a minimum age or length of union membership requirement, positing that such an age requirement could be "applied with the precision and certainty necessary to ensure it is 'uniformly imposed.'" *Id.* at 1104.

155. *American Federation,* 715 F. Supp. at 1121. The union pointed out that the complainant served 18 previous years as a union officer. *Id.* Therefore, the union argued that the bylaw promoted a major purpose of the LMRDA—preventing the entrenchment of officers in union office. *Id.* The court responded to this argument by stating that:

rooting out entrenched authority per se was not Congress' goal, though it has become a shorthand for it. Congress' intent was stated in the statute . . . . and is evidenced in a legislative history focused more on corrupt leadership that entrenches itself by excluding others. Viewed in this light, the restriction makes less sense, as there is certainly no automatic connection between age and corruption, and unlimited tenure may be dealt with by appropriate bylaws limiting length of service in office.

*Id.* (citing Wirtz v. Hotel, Motel & Club Employees Union, Local 6, 391 U.S. 492, 497-99 (1968)).
tion, under the Secretary of Labor's supervision, was ordered by the court.\textsuperscript{156}

\textbf{F. Union Membership Requirement}

In \textit{Donovan v. Sailors' Union},\textsuperscript{157} the United States Court of Appeals for the Ninth Circuit reviewed a union bylaw that prevented union members with less than three years of experience from running for union office.\textsuperscript{158} Utilizing the stringent test set out by \textit{Steelworkers} and \textit{Hotel Employees}, the court found the regulation to be unreasonable and a violation of section 401(e).\textsuperscript{159} The union attempted to justify the bylaw by arguing that the rule guaranteed that candidates would be familiar with union issues and problems.\textsuperscript{160} The court rejected that contention because Congress clearly intended that the framework of democratic elections, and union members choosing within that framework, was the best means of protecting those interests.\textsuperscript{161} The court held that the rule violated the intent of the Act and was contrary to the Department of Labor's regulations.\textsuperscript{162} Consistent with other courts, the Ninth Circuit found that such regulations are not to be given broad reach.\textsuperscript{163}

\textbf{III. THE UNITED STATES CONSTITUTION—A REASONABLE MODEL?}

\textbf{A. Constitutional Restrictions That Do Not Impede Democracy}

Given that Congress plainly intended union elections to be modeled after general political elections that occur in the United States, it is logical to examine union election restrictions in light of the restrictions that the Constitution of the United States places on candidacies for the elected offices of representative, senator, and President.\textsuperscript{164} Analogies will be

\textsuperscript{156} Id.
\textsuperscript{157} 739 F.2d 1426 (9th Cir.), corrected, 117 L.R.R.M. (BNA) 2512 (9th Cir. 1984), cert. denied, 471 U.S. 1004 (1985).
\textsuperscript{158} Id. at 1428.
\textsuperscript{159} Id. at 1429. The court found that the bylaw was inconsistent with the purposes of the LMRDA. Id. "Qualifications that unduly interfere with a free choice of candidates are at cross-purposes with the Act and therefore are unreasonable." Id.
\textsuperscript{160} Id. The court called it "desirable" that candidates for union office are familiar with the membership and the issues of concern. Id. Nonetheless, Congress asserted that it should be assumed that union members will exercise good judgment in casting their votes. Id.
\textsuperscript{161} Id. at 1429-30.
\textsuperscript{162} Id. at 1430.
\textsuperscript{163} Id. at 1429.
\textsuperscript{164} The broad outlines of a framework for this analysis is set out by Barnard, \textit{supra} note 40, at 1278-79. As Barnard suggests, parallels will be drawn by examining "the underlying rationale" behind constitutional requirements and union bylaws, rather than "literally" applying such standards. Id. at 1278.
drawn, where appropriate, with post-Steelworkers cases discussed above in an attempt to discern indices of reasonableness that union members, union leaders, and the Secretary of Labor might more clearly rely upon in challenging or implementing union bylaws.\textsuperscript{165}

To run for the office of President, the Constitution\textsuperscript{166} requires that a person must (1) be a citizen of the United States, (2) be at least thirty-five years of age, and (3) have been a resident of the country for at least fourteen years.\textsuperscript{167} To run for the House of Representatives, the Constitution\textsuperscript{168} requires that a person (1) be at least twenty-five years old, (2) be an inhabitant of the state he or she has chosen to represent, and (3) have been a citizen of the United States for at least seven years.\textsuperscript{169} Finally, to serve as a Senator, the Constitution\textsuperscript{170} states that (1) a person must be at least thirty years old, (2) an inhabitant of the state he or she has chosen to represent and (3) a citizen of the United States for at least nine years.\textsuperscript{171}

By the Constitution's very words, these regulations were considered by our Founding Fathers to be reasonable prerequisites and requirements to serve in federal office. Had these requirements been considered inconsistent with the goal of achieving representative democracy, the Founding Fathers would not have included them. Not every person who is a citizen of the United States can run for political office under the restrictions. It is a numerical given that a certain percentage of United States citizens are necessarily eliminated from the pool of potential candidates for each of these offices by the Constitution's age requirements. More important, however, is to analyze the types of citizens that the Founders chose to eliminate from its pool of potential leaders and to ask why.

\begin{itemize}
\item \textsuperscript{165} Id. at 1279.
\item \textsuperscript{166} U.S. Const. art II, § 1, cl. 5.
\item \textsuperscript{167} Article II, section 1, clause 5 of the United States Constitution states:
\begin{quote}
No Person except a natural born citizen, or a citizen of the United States, at the time of the Adoption of this Constitution shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.
\end{quote}
Id.
\item \textsuperscript{168} U.S. Const. art. I, § 2, cl. 2.
\item \textsuperscript{169} Article I, section 2, clause 2 of the United States Constitution states: "No Person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen." Id.
\item \textsuperscript{170} U.S. Const. art. I, § 3, cl. 3.
\item \textsuperscript{171} Article I, section 3, clause 3 of the United States Constitution states: "No Person shall be a Senator who shall not have attained to the Age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen." Id.
\end{itemize}
1. Why an Age Requirement?

First, the Constitution eliminated younger voters from the pool—those under the age of twenty-five for the House, age thirty for the Senate and age thirty-five for the Presidency. The Founders seemed to believe, generally, that persons of a certain age would bring a certain amount of experience and responsibility to federal office.\textsuperscript{172} The Founders further believed that experience was an important factor in securing the "Blessings of Liberty."\textsuperscript{173} It should be noted, however, that life expectancy in the late-1700s was considerably shorter than it is today; thus, the age minimums expressed by the Founders are higher relative to that period's life expectancy, than they are today. Therefore, one might hesitate to apply too literally the constitutionally stated age requirements in a late twentieth century context;\textsuperscript{174} a person who was thirty-five years of age in the late eighteenth century, for example, had lived a substantially higher percentage of his or her lifetime than one who is thirty-five years of age today.\textsuperscript{175}

The constitutional requirement not only eliminated natural-born chil-

\textsuperscript{172} Discerning the intent of delegates to the Constitutional Convention, convened on May 5, 1787, and dissolved on September 17, 1787, is problematic. See generally WILLIAM PETERS, A MORE PERFECT UNION 77, 88-89, 147-48 (1987). Discussions over the age requirement took place at several different stages of the Convention over the five-month period. \textit{Id.} at 77. Dissolving itself into a Committee of the Whole that would later make recommendations to the full Convention, for example, the Convention initially voted to have no minimum-age requirement for members of the House while setting a minimum-age requirement of 30 years for Senators. \textit{Id.} Meeting on June 21, 1787, the full Convention reviewed the Committee of the Whole's recommendations. George Mason of Virginia spoke out forcefully in favor of imposing an age requirement for members of the House, stating:

"I think it absurd that a man today should not be permitted by the law to make a bargain for himself and tomorrow should be authorized to manage the affairs of a great nation

Congress has proved a good school for our young men. It may be so, for anything I know, but if it is, I choose that they [rather than the nation] should bear the expense of their own education."

\textit{Id.} at 88-89 (quoting George Mason). The Convention agreed and voted, seven states to three, to set a minimum age requirement for the lower House at 25 years. The specific wording of Article I, section 3, clause 2 was approved on August 8, 1783. \textit{Id.} at 148.

\textsuperscript{173} U.S. CONST. pmbl.

\textsuperscript{174} Barnard seems to suggest that age is an irrelevant factor to consider in examining a union bylaw since "[p]resumably, if the individual is old enough to shoulder responsibilities of work, he should also be able to participate in leadership if his fellow members deem him worthy." Barnard, \textit{supra} note 40, at 127. The more troublesome issue in regard to age, however, is not a minimum-age requirement in order to seek union office, but maximum age limitations. See \textit{supra} notes 140-56 and accompanying text. The lack of constitutional limitations in this regard, therefore, may very well be relevant.

\textsuperscript{175} The average age of delegates to the Constitutional Convention of 1787 was 42. See CHARLES L. MEE, JR., THE GENIUS OF THE PEOPLE 149 (1987).
dren, but also citizens with actual voting rights, from the potential pool of candidates for elected federal office. Therefore, an analogy can be drawn that the Founding Fathers did not consider the right to vote in an election commensurate with the right to run for office. Voting rights are not equal with candidacy rights, according to our Constitution. If age (namely experience) was considered a reasonable requirement by our forefathers within a democratic framework, it seems that a union should be permitted to require some sort of minimum-age/experience component within its own candidacy regulations.

2. Why Residency and Citizenship Requirements?

To run for federal office, our Constitution states that a person presently be an inhabitant of the state (in the case of senator and representative) that he or she wishes to serve, and have been a citizen of the United States for a certain period of time. By requiring a person to be an inhabitant of the state he or she seeks to serve as well as a citizen of the United States, the Founders sought to assure a candidate's familiarity with regional and national concerns as well as to ensure undivided loyalty from people serving in our government. Appropriately, the length of

176. U.S. CONST. amend. XXVI.
177. See supra note 154 (discussing court ruminations and the Department of Labor's regulations relating to age and competency requirements). Indeed, DOL regulations permit unions to impose minimum-age requirements but prohibit a maximum retirement age. 29 C.F.R. § 452.46 (1992) (stating that “[a] labor organization may establish certain restrictions on the right to be a candidate on the basis of personal characteristics which have a direct bearing on fitness for union office,” such as a minimum-age requirement).
178. See supra notes 164-71 and accompanying text (setting forth the constitutional requirements to run for office).
179. The inherently discriminatory nature of these restrictions did not escape the notice of delegates. See generally Peters, supra note 172, at 150-51. In particular, considerable debate surrounded the conceptualization and drafting of the Constitution's citizenship requirement. Id. at 150. The Committee of Detail had proposed a four-year citizenship requirement for persons seeking to serve in the Senate. Id. On August 8, 1787, delegates to the Constitutional Convention debated at length the committee's recommendation. Id. Governor Morris of Pennsylvania sought a vote to increase the citizenship requirement to 14 years. Id. James Wilson of Pennsylvania, a person of Scottish decent, rose to point out that he and others like him—actual participants in the drafting of the Constitution—would be precluded by the requirement from holding office. Wilson called the provision “'degrading discrimination'” and a “'mortification.'” Id. at 151. Although Governor Morris' resolution was defeated, the citizenship requirement was preserved fully and, indeed, increased to nine years. Id. Benjamin Franklin of Pennsylvania also rose in opposition to the Morris proposal, remarking:

“[l]n every other country in Europe all the people are our friends. We found in the Course of the Revolution that many strangers served us faithfully—and that many natives took part against their Country. [l]t is a proof of attachment which ought to excite our confidence . . . .”

Mee, supra note 175, at 243 (quoting Benjamin Franklin).
the residency requirement increases in correlation to the importance of
the office sought—from seven years for representative, to nine years for
senator, to fourteen years for President.\textsuperscript{180}

B. Post-Steelworkers Analyses

Viewed through the myriad of divergent holdings, the courts since
Steelworkers appear to have ruled inconsistently. However, it becomes
clear that a court’s willingness to give a union regulation broad or narrow
reach, as demanded by Justice Brennan in Steelworkers, has depended
significantly upon the nature of the regulation challenged.

1. Meeting Attendance Requirements: A Very Short Leash

The federal courts of appeals have applied the Steelworkers analysis
most strictly to union attempts to impose meeting attendance require-
ments on members.\textsuperscript{181} This is precisely the type of regulation the
Supreme Court considered in Steelworkers. Although the scope of the
union’s attempt to regulate employee candidacies has changed, argu-
ments put forth by unions in support of the rule have not.\textsuperscript{182} Nor has
courts’ unwillingness to uphold this type of regulation.

Consistent with Steelworkers, the Fifth Circuit in Longshoremen’s re-
jected the union’s argument that the meeting attendance rule ensures that
members who seek office have at least a minimal understanding of union
issues and activities.\textsuperscript{183} The court’s reasoning was consistent with Steel-
workers, where the Supreme Court stated that democratic elections were
the best means of preserving the union’s interest in ensuring that quali-
fied leaders are elected to office.\textsuperscript{184}

The purpose of the rule as posited by the union in Longshoremen’s,
Doyle, and Steelworkers, however, does not seem unlike the constitu-
tional provisions requiring citizens to obtain a level of familiarity with

\textsuperscript{180} Therefore, if the Framers of the Constitution thought it reasonable to require can-
didates for certain federal offices to have some level of familiarity with the regional con-
cerns of citizens, it seems that a union should be able to require a similar level of
familiarity for its elected offices. Again, the Department of Labor’s regulations, pointing
to continuous good standing and prior membership restrictions, seem to indicate that such
an interest would be legitimate. See 29 C.F.R. § 452.46 (1992).

\textsuperscript{181} See supra notes 87-106 and accompanying text (discussing court opinions regarding
union elections).

\textsuperscript{182} See supra notes 65-72 and accompanying text (discussing the Supreme Court’s
opinion in Local 3489, United Steelworkers v. Usery, 429 U.S. 305 (1977)).

\textsuperscript{183} Marshall v. Local 1402, Int’l Longshoremen’s Ass’n, 617 F.2d 96, 98 (5th Cir.), cert.
denied, 449 U.S. 869 (1980). This argument, however, is not explicitly stated. Rather, the
restriction apparently attempts to serve this interest through the meeting attendance
requirement.

\textsuperscript{184} Steelworkers, 429 U.S. at 312.
local, state, or national issues in order to represent adequately fellow citizens in office. For citizens seeking to serve in the House of Representatives, the line is drawn at seven years of residency and twenty-five years of age. A union also must be able to draw a distinction in terms of the experience required of its members in order to run for leadership positions. In *Doyle*, Judge Silberman stated in dissent that the union regulation crossed the line separating an unreasonable familiarity argument from its reasonable counterpart. Judge Silberman believed the difference between an eighteen-month and a twelve-month meeting attendance requirement was significant enough to justify its reasonableness. The majority disagreed, however.

Ironically, making a meeting requirement rule easier to satisfy is unlikely to save the bylaw. In *Longshoremen's*, three judges pointed out that the insertion of liberal excuse provisions in its meeting attendance regulation, rather than saving the bylaw by making it less difficult to fulfill, actually "undermine[d] the [regulation's] only legitimate purposes"—ensuring that candidates are informed. The court discussed whether a regulation containing a liberal excuse provision—notice by means of a premeeting phone call to the union hall—achieved its intent of ensuring a more informed membership. In that form, the court stated that the rule "serves no demonstrable purpose, but . . . imposes a substantial adverse effect on the democratic process."

In short, when unions attempt to pass meeting attendance requirements in any form, courts have kept unions on a very short leash—grant-

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186. *Id.* Judge Silberman stated: "Implicitly at least, the [Steelworkers] Court . . . suggested that an attendance requirement that took operative effect only shortly before an election might stand on surer footing. . . . Absent precise and binding precedent, the court lacks adequate grounds to reject the Secretary's interpretation of the statute as capricious." *Id.* Judge Dooley, in *Goldberg v. Amarillo General Drivers Union*, 214 F. Supp. 74 (N.D. Tex. 1963), described the line between reasonable and unreasonable restrictions as the following:

> It is true enough that a union organization has the right to exercise proper discipline of members and prescribe conditions which may be tests of good faith or designed for tokens of interest in the welfare of the union, such as an extended period of membership, or regular attendance at meetings, and, of course, the union to survive must have authority to impose dues and take measures to effect the regular and reliable receipt of such income, but there must be a line drawn somewhere between moderation and extremism . . . .

*Id.* at 79-80.
189. *See supra* note 91.
190. *Longshoremen's*, 617 F.2d at 98.
ing very little discretion to the organization. It is not entirely clear at what point, if any, a union would stand on surer footing in enacting a familiarity requirement. The least stringent requirement struck down by any court of appeals since *Steelworkers* was the six meetings in twelve months requirement rejected by the court in *Doyle*. Whether a bylaw that requires members to attend one, two, or three monthly meetings within a twelve-month period would be upheld is the only remaining gray area that courts have not yet faced.

2. Good Standing and Dues Payment: Disturbing Rationalizations of Restrictive Rules

In *Masters, Mates and Pilots*, the court upheld union regulations requiring that members be in good standing, as measured by their prompt payment of quarterly union dues over a twenty-four month period,\(^{191}\) giving the regulations broad reach.\(^{192}\) On the face of the Fourth Circuit’s opinion,\(^{193}\) however, no interests in support of the regulation were expressed.\(^{194}\) It is implicit, perhaps, that a union has a vital interest in preserving and presiding over its own economic integrity.\(^{195}\) A counter argument to this is that a union has a variety of means effectively to regulate dues payment from members by methods that would be less likely to impede the democratic process of union governance. Alternatively, one could argue that the twenty-four month time period serves the same purpose as residency and citizenship requirements in the Constitution, which is to ensure candidate familiarity with local concerns.\(^{196}\)

The court in *Masters, Mates & Pilots* apparently felt that the latter interest outweighed any antidemocratic effects that the bylaw might have had on the union’s election process. The court criticized the Secretary of Labor by pointing out what the union bylaw did not do.\(^{197}\) It did not disqualify a vast percentage of union members from participating in union elections.\(^{198}\) Further, referring to *Doyle*, the court implied that the

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191. See supra note 108 and accompanying text.
192. See supra notes 107-14.
194. Id. at 72-73. Instead, the Fourth Circuit focused on differences between the bylaw examined and that reviewed by the Court in *Steelworkers*. Id.
195. See James, supra note 9, at 252. Arguably, according to one “systemic approach to unionism,” if unhealthy financially, a union might be ineffective in its role of “foster[ing] industrial peace, efficiency, and growth.” Id.
196. See supra notes 169, 171.
197. Masters, Mates and Pilots, 842 F.2d at 71.
198. Id. at 73. It was estimated that only 10% of the union’s membership was negatively affected by the regulation.
regulation did not operate to the advantage of an entrenched leadership.\textsuperscript{199} The court also noted that no irregularities beyond members' control, such as seasonal employment, made it too difficult for members to meet the bylaw's requirement.\textsuperscript{200} In essence, the court examined three indicia of the regulation's effect on the democratic election process and, seeing very little negative effect, upheld the regulation.\textsuperscript{201}

In Aluminum Workers, where one of six members were disqualified from seeking office and voting because they failed to pay strike assessment fees, at least one indicia of effect—the percentage of potential candidates eliminated from the pool—was at least twice as great as in Masters, Mates and Pilots.\textsuperscript{202} As in Masters, Mates and Pilots, it is not clear from the Eleventh Circuit's opinion which interests the union specifically argued that the regulation was aimed to serve.\textsuperscript{203} No time period was operative within the bylaw, eliminating any argument that it was designed to protect the union's interest in ensuring candidates' familiarity with union issues.\textsuperscript{204} The union did have, however, a financial stake in conducting its internal affairs.\textsuperscript{205} Nonetheless, the Eleventh Circuit ignored that interest and instead focused on the issue of notice.\textsuperscript{206} The court stated that because members should have known by reading a copy of the union's constitution that their failure to pay strike assessment dues could detrimentally effect their ability to run for union office, the bylaw was reasonable.\textsuperscript{207}

The Aluminum Workers decision is disturbing because, in essence, the Eleventh Circuit held that notice by publication may be sufficient to save a bylaw despite its antidemocratic effects.\textsuperscript{208} In Aluminum Workers, where less than 20% of the membership was adversely affected, notice of the requirement did save the regulation. Whether publication might save a regulation with a larger impact on the union election process is open to question.

Both courts' holdings seem inconsistent with the majority of court interpretations of section 401(e) as well as the LMRDA's legislative history, which indicates that elections in this country must serve as a model

\textsuperscript{199} Id.

\textsuperscript{200} Id.

\textsuperscript{201} See supra notes 178-14 and accompanying text.

\textsuperscript{202} See supra note 111 and accompanying text.

\textsuperscript{203} See generally Department of Labor v. Aluminum, Brick & Glass Workers' Int'l Union, Local 200, 941 F.2d 1172, 1177-91 (11th Cir. 1991).

\textsuperscript{204} Id.

\textsuperscript{205} See supra notes 112 and 116.

\textsuperscript{206} See supra notes 119-22 and accompanying text.

\textsuperscript{207} Brick & Glass Workers, 941 F.2d at 1177.

\textsuperscript{208} Id.
for union elections. Beyond a union's interests in its own finances and ensuring informed candidates—the latter of which have never been upheld by the courts—no other interests justified the regulations' antidemocratic effects. No analogous constitutional provisions deal with preserving the nation's fiscal integrity through the election process. Other constitutional provisions do deal with the subject of fiscal integrity, however, and it is significant that these provisions appear in wholly separate sections of the Constitution. Preserving the nation's fiscal integrity, paralleling a union's fiscal integrity, according to our nation's Founders, apparently had nothing to do with conducting democratic elections.

Citizens of the United States do not lose their eligibility to run for office for failure to pay their income taxes; likewise, a union member should not be excluded from running for office for failure to pay strike assessment or other types of union dues—if United States elections are used as the model. If union elections are to be conducted under the same principles as those in the United States, as stated by the Supreme Court in Hotel Employees, then union members in choosing who they want to run their union will consider whether or not a candidate has paid all of his or her union dues—just as citizens of the United States weigh whether or not a candidate owes taxes to the government. In short, considering existing Supreme Court precedent along with congressional intent in enacting Title IV of the LMRDA, there appears to be no persuasive justification for either the Eleventh Circuit's holding in Aluminum Workers or the Fourth Circuit's holding in Masters, Mates and Pilots.

3. Management Applications: What Value Undivided Loyalty?

In Postal Workers and Letter Carriers, the same argument was pos-

209. See supra notes 42-44 and accompanying text.
211. U.S. Const. art. I, § 8, cls. 1, 2, 3. These sections of the Constitution speak to Congress' power to impose and collect taxes, borrow money and regulate commerce. Id.
212. See supra note 54 and accompanying text.
213. Wirtz v. Hotel, Motel & Club Employees Union, Local 6, 391 U.S. 492, 504 (1968). As Justice Brennan stated: "Congress' model of democratic elections was political elections in this country . . . . [T]he assumption is that voters will exercise common sense and judgment in casting their ballots." Id.
ited by the unions in support of the regulation.217 In those cases, the
unions argued that the regulation at issue was reasonable because the
unions had a legitimate interest in ensuring that candidates for union of-

fice had no divided loyalties stemming from their application for a man-
agement job within the past two years.218 Ensuring loyalty in a union is a
goal analogous to the constitutional provision requiring that a candidate
for President be a natural-born citizen.219 Therefore, the Founders con-
sidered a citizenship requirement to be a reasonable requirement for a
candidate for President—one that rather than impeding democracy
within the country might actually foster a more representative
government.

Analogously, union regulations prohibiting candidates from applying
for management positions may be sustained on grounds that the require-
ments are modeled after elections in this country.220 The union is seeking
to protect an interest that was considered by the Founders to be a reason-
able qualifier for the office of President. Moreover, in the often conten-
tious area of labor-management relations, few would argue against the
proposition that unions have an extremely strong interest in ensuring that
all elected members—from the union steward to the union president—
have undivided loyalties.221

Arguing in the alternative, however, there is no requirement that a per-
son be a natural-born citizen to run for senator or representative. For
whatever reason—perhaps the fact that legislators have less unilateral
opportunity to wield power than does the President—the Founders were
not so concerned that senators and representatives pass the same undi-
vided loyalty test. One might analogize based on these requirements,
therefore, that in the environment of union elections, the bylaws' two-

218. See supra notes 131, 138 and accompanying text.
219. The citizenship provision was written into Article II, section 1, clause 5 of the
Constitution to ensure that the leader of the United States would be clearly undivided. See
supra notes 131, 138 and accompanying text.
220. See supra note 47 and accompanying text.
221. Letter Carriers, 965 F.2d at 66 (quoting Brock v. Cincinnati Area Local Am. Postal
The Sixth Circuit quoted the Cincinnati Area Local court as saying:
"It is axiomatic that [union officials] . . . must maintain the appearance that they
are dealing justly. In the sensitive area of labor negotiations and representations,
it is essential that the officers of defendant maintain the appearance of absolute
loyalty and devotion to their constituents, to the end that when a settlement or
other course of action is suggested to the constituent by the officer, the constitu-
ent has every assurance that the settlement or suggestions are made in his or her
best interests."
Id. (quoting Cincinnati Area Local, 1988 U.S. Dist. LEXIS 17579 at *5-*6).
year requirement reaches too far. Countering this argument, however, is the strong, demonstrable union interest in undivided representation at all levels of a union representation.222 The Founders identified such a risk in the office of President. A union's interest in undivided loyalties, however, like the nation's interest in ensuring a loyal President, are at least somewhat analogous.

4. Retiree Restrictions: Unreasonable Maximums

In declining to enforce maximum age ceilings in Sheet Metal Workers223 and American Federation,224 the courts' rulings that union bylaws not be given broad reach225 were consistent with Steelworkers.226 To outweigh the regulations' restrictive effect on democracy within the union, the unions had to assert a strong union interest.227 In both cases, the records are devoid of persuasive reasoning.228

The United States Constitution does not explicitly mention maximum age ceilings for any office. Appropriately, the Constitution left it in the hands of voters to determine whether or not a candidate is too old to be elected to federal office. Similarly, the election procedures established under the LMRDA also leave age considerations to the thoughtful consideration of union members.229 The courts correctly decided these cases, recognizing that an important aspect of the democratic process is the ability to determine which candidates are most qualified to serve in union office.

5. No Excuse for a Union Membership Requirement

The interest posited by the union to support the three-year member-

222. See Cox, supra note 43, at 842 (stating that “[t]he election of officers is the heart of union democracy”); see also Hartley, supra note 53, at 50 (stating that electing officers is the essence of union democracy).
226. See supra notes 140-44 and accompanying text.
ship requirement at issue in *Sailors' Union* was that the requirement assured that candidates were familiar with union affairs. While it is possible to analogize the purpose of such a tenure requirement with a residency or citizenship requirement for office within the United States government, the court rejected the regulation as unreasonable. The court may have considered that in many ways a membership requirement impinges the democratic process of a union even more severely than did the eighteen-month meeting attendance requirement considered in *Steelworkers*. Given the *Sailor's Union*’s bylaw’s broad antidemocratic impact, and the appeals court’s obligation to acknowledge the *Steelworkers* Court’s “broad reach” analysis, the court appropriately struck down the bylaw.

**IV. Recommendations**

**A. Applying an Alternative Means Analysis**

Because a union might legitimately argue that it has strong internal interests in several areas, such as fiscal integrity, establishing a new prong to the *Steelworkers* test will further aid unions, the Secretary of Labor, and the courts in differentiating legitimate interests from those that are

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231. Id. at 1429.
232. See supra note 179 and accompanying text.
233. Id.; see also supra notes 157-63.
234. For example, although a smaller percentage of members are likely to be negatively impacted by such a requirement, members lacking the requisite seniority within the union have no means other than biding their time to satisfy the bylaw. Thus, there is not even an excuse provision that would allow an informed and concerned union member to participate. The restriction in *Sailors’ Union* applied to all union officers at the local and international level. *Sailors’ Union*, 739 F.2d at 1430.
235. Although the conclusion of this analysis reaches a result contrary to the constitutional model, it receives support from the recognition that it is not always appropriate to draw literal parallels between union bylaws and constitutional restrictions. *See supra* note 165. Rather, it is more appropriate to examine the underlying reasons for the rules. *Id.* Here, for example, a union has attempted to impose a three-year membership requirement. *See supra* note 159. The Constitution requires a citizen to be a resident of the United States for seven, nine or 14 years, depending upon the importance of the office sought. *See supra* notes 166-71. By its very words, such restrictions are deemed reasonable constitutional requirements and, implicitly, requiring a more extended period of citizenship would be unreasonable. The justification for the rule becomes less clear. Similarly, the justification behind a stringent union membership requirement also begins to dissipate where the rule’s antidemocratic effect outweighs its purpose of guaranteeing candidates who are in touch with the concerns of the union electorate. Therefore, the issue is not whether a union can regulate this area and protect its interest in having informed officers; rather, it is to what extent the area may be regulated.
not legitimate. An alternative means test, for example, might be useful in analyzing the union interest posited before it is weighed on the Steelworkers balance against its potential detrimental effect on union democracy.

No court, prior to or since the decision in Steelworkers, has applied an alternative means test in judging the reasonableness of union regulations. Doing so could bring consistency to this area of the law as well as eventually result in reducing the number of challenges brought under section 402(e). For example, the union in Masters, Mates and Pilots at least implicitly proffered an interest in its own fiscal integrity. Although the court of appeals gave the union bylaw broader reach than the Steelworkers Court applied to a meeting attendance requirement, the regulation would not have survived an alternative means analysis. The union's interest in ensuring that quarterly union dues were paid is clearly important. Equally clear, however, is that this interest could be preserved and protected in many ways that would have had less negative impact on the goals established by Congress in enacting section 401(e)—preserving and protecting union democracy.

For example, other methods could be utilized by a union to sanction a member who has not paid his or her union dues. Most efficacious might be imposing fines on delinquent union members. Striking at a member's pocketbook is likely to be even more efficacious in securing this important union interest because most members will never have any interest in running for union office. Similarly, there are means other than meeting attendance requirements through which a union could ensure that candidates are informed about union business and issues. For example, a union could require that a member, once elected, attend a training seminar or special classes that update newly elected officers on issues of special importance.

In contrast, a union's interest in ensuring undivided loyalties would likely survive the alternative means analysis. For example, requiring future candidates to sign a loyalty oath as an alternative to banning those who sought management positions from holding union office for a specified period of time might be considered inadequate. A union could argue

238. See supra note 195 and accompanying text.
239. One commentator labels the good standing rules "vital" not only to protect a union's economic interest but also to protect the "union from an influx of new voters and neophyte candidates who are unfamiliar with the nature and functioning of the union." Note, The Election Labyrinth: An Inquiry Into Title IV of the LMRDA, 43 N.Y.U. L. REV. 336, 341 (1968).
240. See generally supra notes 50-59 and accompanying text. Indeed, as one commentator points out, the danger of restrictive rules arises as it is used by the union's leadership to "limit opposition and maintain the incumbents in office." Note, supra note 239, at 341.
that a loyalty oath—in light of the real potential for accusations from members that their interests are not adequately protected, or that a union representative is not adequately committed to the members he or she serves—would fall short of achieving the intended goals. Having survived an alternative means test, the union’s interest in preserving the integrity of its leadership is balanced against the bylaw’s potentially detrimental effect on democratic elections.

Overall, utilizing an alternative means test could have the effect of reducing the number of suits brought by union members through the Secretary of Labor by narrowing the categories of legitimate interests unions can cite in support of restrictive regulations. Creating a more stringent test is consistent with Justice Brennan’s command that union bylaws not be given broad reach by federal court judges. Hence, it would more adequately serve the goal that section 401(e) was enacted to protect—preserving union democracy.

B. A Prohibition Against Burden Shifting

Justice Brennan stated in *Local 3489, United Steelworkers v. Usery* that a bylaw must be judged “not by the burden it imposes on the individual candidate but by its effect on free and democratic processes of union government.” As demonstrated by the Fourth Circuit’s opinion in *Brock v. International Organization of Masters, Mates & Pilots*, as well as the Eleventh Circuit’s opinion in *Department of Labor v. Aluminum, Brick & Glass Workers International Union, Local 200*, some lower courts have ignored the Supreme Court’s command. Instead of solely weighing the provision’s detrimental effect on union democracy in the first instance, they have shifted at least part of the burden to complaining union members to demonstrate that they could not have easily met the bylaw’s requirements.

In *Masters, Mates and Pilots*, the court noted a lack of seasonal obstacles that might have led to high unemployment in the industry and, consequently, made it more difficult for members to make quarterly dues

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242. Id. at 311 n.6.
243. 842 F.2d 70 (4th Cir. 1988).
244. 941 F.2d 1172 (11th Cir. 1991).
245. See generally Barnard, supra note 40, at 1275-78. Barnard’s pre-Steelworkers analysis also cites this as an area of difficulty enmeshing the Secretary of Labor. Id. Barnard suggests that the Secretary “could shift his emphasis . . . by transferring the burden of proof to the unions to justify their qualifications, and . . . he could insist that the union demonstrate that the limitation imposed is consistent with those for candidates in political elections in this country.” Id. at 1275-76.
246. 842 F.2d at 70.
payments. In essence, the court was noting that the decision whether to pay quarterly dues was undertaken by members as individuals. That is, the bylaw imposed by a union's leadership did not impose an unnecessary burden on members. Similarly, in Aluminum Workers, the court found it dispositive that members had notice of the bylaw's fee requirement.

By considering these factors, the courts of appeals ran afoul of the Supreme Court's admonition in Steelworkers; it is of no consequence that prewarned members had the ability or knowledge with which to meet the bylaw's requirement. For example, in Steelworkers, every member of the union with at least eighteen months tenure had the ability to satisfy the bylaw's requirement that a member attend at least eighteen meetings within a three-year period leading up to elections. By requesting a copy of the union's constitution, or examining the copy distributed to them upon becoming a member, each member theoretically would also have had notice. The Supreme Court in Steelworkers, however, discarded these saving provisions as irrelevant because of the restrictive effect that the bylaw, enacted by the union's leadership, had on members' ability to elect candidates to lead their union. The Court recognized that a vast majority of union members are not intimately familiar with every union bylaw, and thus would not have notice. The Court explicitly stated that the onus is on the parties who enacted the provision in the first instance.

Courts that have considered such saving provisions have essentially placed the onus on a member's reaction to the restrictive bylaw. By doing so, these courts accord the regulation a much broader reach than the

247. See supra note 112 and accompanying text.
248. See supra note 112 and accompanying text.
249. 941 F.2d 1172 (11th Cir. 1991).
250. See supra note 123 and accompanying text.
251. See also Barnard, supra note 40, at 1276. Examining the literal phrasing of 29 U.S.C. § 401(e) (1988), Barnard notes that:
   The basic right guaranteed by the phrase is the right of a member to be a candidate and to hold office, and not the right of the union to impose qualifications. It follows that any union asserting an exception to that right should have the burden of showing that . . . its own peculiar interest is greater than the preservation of the democratic ideal embodied in the basic right.
Barnard, supra note 40, at 1276.
252. See supra note 70 and accompanying text.
253. See supra note 70 and accompanying text.
254. See supra note 70 and accompanying text.
255. Local 3489, United Steelworkers v. Usery, 429 U.S. 305, 310-11 & n.6 (1977) (stating that the eligibility rule is to be judged "not by the burden it imposes on the individual candidate but by its effect on free and democratic processes of union government").
Supreme Court in *Steelworkers* stated should be permitted. In *Steelworkers*, the Supreme Court indicated that the union's leadership should not have enacted overly severe restrictions in the first instance. It is irrelevant whether or not members could have met the bylaws requirements in a latter instance.

The Supreme Court in *Steelworkers*, interpreting section 401(e), correctly placed the burden upon the union to prove that the bylaw at issue was not restrictive. Future courts should refrain from endorsing the type of burden-shifting engaged in by the Eleventh and Fourth Circuits to ensure more consistent rulings and to ensure that section 401(e)'s goal of democratic union elections is met.

V. Conclusion

The test struck by the Supreme Court in *Steelworkers* effectively serves the LMRDA's goal of preserving society's and union members' interests in maintaining democratic unions. It also affords unions sufficient autonomy to conduct their own internal affairs as long as union regulations do not unreasonably interfere with the goal of conducting democratic union elections.

Courts most often have struck the balance in favor of upholding a union bylaw when it is enacted to safeguard what is considered a union's core interest within our labor-management system. This is appropriate. Utilizing an alternative means test would further promote this purpose—consistent with *Steelworkers* as well as Congress' intent in enacting section 401(e). The result would be a more consistent pattern of rulings from federal courts, benefitting society as a whole and unions themselves. Unions would more readily discern a clearly delineated line drawn by the federal courts and the Department of Labor, a line over which they should not tread without risk of triggering a challenge.

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256. See Barnard, supra note 40, at 1276.

257. *Id.* "[This] approach tends to lose sight of the member's basic right to seek and hold office." *Id.*

258. In addition, as noted by one author, placing the burden on the union "is consistent with well-recognized tenets of statutory construction." See Beaird, supra note 41, at 1319. For example, as a general rule, the right to run for union office should be open to all members unless specifically excluded. *Id.* "Exceptions in remedial statutes are narrowly construed, so as to give effect to the main objective of the legislation, and a party has the burden of plainly bringing himself within the terms of the exception." *Id.*