Local 82, Furniture Moving Drivers v. Crowley: A Restatement of Institutional Power Under Titles I and IV of the LMRDA

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The Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), also known as the Landrum-Griffin Act, is an ambiguous document. The LMRDA is a product of unusual political alignments, with Republicans advocating broad individual rights, Democrats favoring institutional over individual interests, and southern lawmakers forsaking their


2. As Professor Archibald Cox notes, many sections of the LMRDA “contain calculated ambiguities or political compromises essential to secure a majority”; therefore, the courts should “seek out the underlying rationale without placing great emphasis upon close construction of the words.” Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 MICH. L. REV. 819, 852 (1960), cited with approval in Local 82, Furniture Moving Drivers v. Crowley, 104 S. Ct. 2557, 2566 n.17 (1984). See also D. McLaughlin & A. Schoomaker, The Landrum-Griffin Act and Union Democracy 7 (1979) (“By design, much of the language of Title IV is quite broad and somewhat vague.”); Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 HARV. L. REV. 851, 863 (1960) (“The language of section 101(a), despite its specificity, is sufficiently ambiguous to create several problems of interpretation.”); Smith, The Labor-Management Reporting and Disclosure Act of 1959, 46 VA. L. REV. 195, 225 (1960) (noting the “somewhat awkward and confusing” language of § 402(c)). The crucial point is not that Congress should be criticized for enacting ambiguous legislation, but that the ambiguities should be recognized for what they are and what they suggest about congressional intent. The presence of ambiguous language in a statute requires the interpreter to consider additional factors, such as its legislative history and the social problems it addresses. The interpreter’s task is to determine which of several possible referents Congress meant to signify when it used certain words. 2A C. Sands, Statutes and Statutory Construction § 45.02 (4th ed. 1973).


4. Instead of a federally enforceable bill of rights for union members, the Senate committee majority, led by Senator John Kennedy (D-Mass.), advocated a voluntary code of ethics that would reflect labor’s “considerable capacity to regulate [its] own affairs.” Id. at 23, 1 Legislative History, supra note 3, at 419.
antipathy towards organized labor to defend unions against overregulation.  

The Act guarantees rights to union members yet seems to defer to the very authorities whose conduct in union office had abrogated those rights. It makes enforcement contingent on vague balances of interest, relying on such concepts as “adequate,” “appropriate,” “fair,” and “reasonable.” With little apparent consistency, the Act creates various private, administrative, civil, and criminal remedies. Even its name is ambiguous: “Labor-Management...
Institutional Power Under the LMRDA

One of the most troublesome ambiguities for the courts has been the relationship between title I, which contains a "Bill of Rights" for union members, and title IV, which sets forth standards for unions to follow in conducting elections of officers. Although there are differences in labor law under § 104 to enforce the member's right to a copy of the collective bargaining agreement; § 210 to enforce the reporting requirements; and § 402 to enforce the election provisions. See 29 U.S.C. §§ 414, 440, 482 (1982). Under § 304, 29 U.S.C. § 464 (1982), civil action to enforce the trusteeship provisions may be brought either by the Secretary of Labor or by any affected member or labor organization. LMRDA § 401(h), 29 U.S.C. § 481(h) (1982), concerning the removal of officers, requires an administrative hearing. Finally, criminal sanctions are imposed by various provisions of titles II, III, V, and VI. With some justification, one commentator has observed that there is no "discernible pattern of consistency" to these remedies. Smith, supra note 2, at 197.

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guage, both titles protect a member’s right to nominate and support candidates and to vote in elections.\textsuperscript{14} Both advance the member’s right to free speech—title I through an express grant of a substantive right,\textsuperscript{15} and title IV through campaign safeguards designed to neutralize the advantages enjoyed by incumbent officers.\textsuperscript{16} Additionally, both protect members from the arbitrary deprivation of their election rights.\textsuperscript{17} The titles differ, however, in the remedies they make available to an aggrieved member. A union member seeking relief for a violation of title I may do so through private civil action in a federal district court after he has pursued internal union remedies.\textsuperscript{18} In contrast, a member seeking relief for a violation of title IV must file a com-

\begin{itemize}
  \item \textsuperscript{14} LMRDA § 101(a)(1), 29 U.S.C. § 411(a)(1) (1982), provides: Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.
  \item \textsuperscript{15} LMRDA § 401(e), 29 U.S.C. § 481(e) (1982), provides in part: In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing . . . shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. . . . Each member in good standing shall be entitled to one vote.
  \item \textsuperscript{16} See LMRDA § 401(c), 29 U.S.C. § 481(c) (1982) (requiring the union to comply with all reasonable requests for distributions of campaign literature at the candidate's expense, to refrain from discrimination in the use of membership lists, and to provide "adequate safeguards" to insure a fair election). See also 29 C.F.R. §§ 452.67-.72 (1984).
  \item \textsuperscript{17} See LMRDA § 101(a)(5), 29 U.S.C. § 411(a)(5) (1982); LMRDA § 401(e), supra note 14.
  \item \textsuperscript{18} LMRDA § 102, 29 U.S.C. § 412 (1982).
\end{itemize}
plaint with the Secretary of Labor after the member has pursued internal union remedies. The Secretary, in turn, investigates the complaint and, upon a finding of probable cause that a violation of title IV has occurred and gone unremedied, files suit to overturn the election and supervise a rerun.\textsuperscript{19} 

Section 403 of the LMRDA makes the complaint to the Secretary the exclusive remedy "for challenging an election already conducted,"\textsuperscript{20} but preserves other remedies for violations of rights prior to the election.

The presence of two potentially conflicting remedies for violations of election rights received little express attention from Congress in 1959 during its deliberations on the proposed labor reform legislation.\textsuperscript{21} The issue inevitably surfaced in the courts, however. \textit{Calhoon v. Harvey}\textsuperscript{22} was the United States Supreme Court's first decision interpreting the significant changes brought about by the LMRDA.\textsuperscript{23} In \textit{Calhoon}, the Court focused its attention on the allocation of institutional power between the courts and the Secretary of Labor,\textsuperscript{24} holding that jurisdiction over an election-related action under section 101(a)(1) depended solely on whether the complaint established a violation of the rights guaranteed by that section and could not rest "in whole or in part on allegations which in substance charge a breach of [t]itle IV rights."\textsuperscript{25} Instead of clarifying the ill-defined line separating title I from title IV, however, \textit{Calhoon} proved a source of confusion for the

\textsuperscript{19} LMRDA § 402, 29 U.S.C. § 482 (1982).
\textsuperscript{21} See Local 82, Furniture Moving Drivers v. Crowley, 104 S. Ct. at 2566-67. Commentators at the time the statute was passed likewise gave little attention to the potential conflict between the two titles. Benjamin Aaron hinted at the overlapping rights, but the conflict he perceived was between federal and state law, not between two provisions of the LMRDA. Aaron, \textit{supra} note 2, at 864, 905. Professor Cox discussed the overlap but apparently foresaw no problems inasmuch as "the Secretary is in charge of all proceedings to enforce the elections requirements." Cox, \textit{supra} note 2, at 834 n.52. Professor Russell Smith described tit. IV as a "supplement" to tit. I and felt that the public remedy of tit. IV was "much more effective" than the private remedy of tit. I; nevertheless, he did not appear to view the remedies as conflicting. Smith, \textit{supra} note 2, at 224-25. One early commentator who did perceive the problem observed that the "solution to the conflicting maze of electoral rights enforcement provisions of the Act would be one set of exclusive federal remedies." Daniels, \textit{supra} note 8, at 330. Professor Clyde Summers appears to be alone among the early commentators in attempting to resolve the conflicting remedies rather than just criticize them. He advocated a broad remedial interpretation of the statute, with preelection remedies available in both federal and state court, using federal law as the substantive law in either event. Summers, \textit{supra} note 6, at 137, 138 n.89. Even in the early LMRDA cases, however, he detected a "disturbing tendency" in the federal courts to treat the post-election remedy through the Secretary of Labor as the sole remedy for enforcing election rights. Summers, \textit{supra} note 7, at 1257 n.200.
\textsuperscript{22} 379 U.S. 134 (1964).
\textsuperscript{23} \textit{Id.} at 141 (Stewart, J., concurring).
\textsuperscript{24} \textit{Id.} at 135.
\textsuperscript{25} \textit{Id.} at 138.
In an effort to resolve nearly twenty years of judicial uncertainty, the Court reviewed *Local 82, Furniture Moving Drivers v. Crowley.*

The plaintiff union members in *Crowley* alleged that the union violated their rights under sections 101(a)(1) and (2) of the LMRDA when a union officer (who was also a candidate in the forthcoming election of officers) barred some of the plaintiffs from a nominations meeting and refused to list one of them on the ballot as a candidate for the office for which the members had nominated him. The district court asserted jurisdiction and issued a temporary restraining order to halt the mail-ballot election already in progress. By then, some voters had already returned marked ballots to the union office. A preliminary injunction followed, voiding the election and ordering a new nominations meeting and election under the supervision of an outside balloting agency. In a divided decision, the court of appeals affirmed, despite the intervention of the Secretary of Labor, who argued that the district court lacked jurisdiction under title I to enjoin the tally and order the new nominations and election. The Supreme Court reversed, holding that the relief awarded by the district court was not “appropriate” within the meaning of section 102 of the LMRDA because section 403 makes a suit by the Secretary of Labor the exclusive remedy in these circumstances. As in *Calhoon,* the Court’s principal concern in *Crowley* lay with the Act’s scheme of apportioning enforcement power between the courts and the Secretary of Labor. However, whereas the *Calhoon* Court had discussed the allocation of power in terms of the right being asserted by the plaintiff, the

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26. The major difficulty for the courts appears to have been a failure to appreciate the import of the *Calhoon* decision’s first sentence, which stated that the Court’s immediate purpose was to resolve questions of institutional power, not to describe the breadth of the rights Congress had bestowed. *Id.* at 135. See *e.g.*, Schonfeld v. Penza, 477 F.2d 899, 903-04 (2d Cir. 1973), discussed *infra* text accompanying notes 171-91; Kupau v. Yamamoto, 622 F.2d 449, 454-55 (9th Cir. 1980), discussed *infra* text accompanying notes 192-219; Schonfeld v. Raftery, 359 F. Supp. 380, 392 (S.D.N.Y. 1973) (“[T]he Kuchel amendment [adding the bill of rights to the LMRDA legislation] has been gutted, insofar as its plain meaning permits immediate recourse to a federal court under [t]itle I to sustain a ‘one man, one vote claim.’ This began with *Calhoon v. Harvey . . . . ’”)


28. *Id.* at 2560-61. If a complaint had been properly filed with the Secretary of Labor under § 402 of the Act, such allegations could have been sufficient to trigger a suit by the Secretary to overturn the election. *Id.* at 2571-72 n.23. Cf. Marshall v. Laborers, Local 29, 106 L.R.R.M. (BNA) 2339 (S.D.N.Y. 1980) (irregularities at nominations meeting were basis for overturning election).

29. See 104 S. Ct. at 2561.


31. 679 F.2d 978 (1st Cir. 1982).

32. 104 S. Ct. at 2557, 2560, 2565-66.
Crowley Court discussed it in terms of the remedy being sought. The Court held that if the remedy consisted of invalidating an election and conducting a rerun, the aggrieved member must utilize the procedure set forth in title IV.33 In a dissenting opinion, Justice Stevens found that relief should be made available to the plaintiffs under title I34 because the plaintiffs had established violations of that title.

This Note will argue that the Crowley decision, although susceptible to the criticism that it diminished members' rights by making them no broader than the remedies available, is a logical extension of the judicial values enunciated in Calhoon. The Note will demonstrate that Crowley complements Calhoon's analysis of title I rights by analyzing title I remedies in accordance with the earlier decision's separation of titles I and IV along the lines of institutional enforcement powers. Drawing on the legislative history, scholarly commentary, and case law, the Note will suggest that the remedial scheme of titles I and IV parallels the Act's underlying political ambiguities yet also reflects a legislative consensus to provide for the accurate resolution of internal union disputes by the government entity possessing the appropriate expertise.

Part I of the Note will focus on the language and legislative history of the enforcement provisions. It will suggest that Congress, although aware of the overlap of remedies, chose not to resolve the ambiguities, thus achieving political compromise at the expense of legal clarity. Part II will discuss Calhoon as the vehicle for the Supreme Court's first interpretation of the LMRDA. This section will conclude that although the Court's holding is a narrow one, the decision is of further significance because of the scheme of values implied by its allocation of enforcement power under the Act. Part III will survey the ensuing confusion among the lower courts over legislative policy and the applicability of title I in the context of an election of union officers. Part IV will demonstrate that the Court in Crowley reiterated the Calhoon principle that jurisdiction depends upon the appropriateness of the forum, not upon the urgency of the plaintiff's need for relief. Finally, the Note will conclude that although the jurisdictional question will remain ambiguous if the plaintiff seeks a less drastic remedy than a court order voiding and supervising a new election, Calhoon and Crowley together articulate the values to be considered in determining whether title IV preempts title I jurisdiction.

33. Id. at 2571.
34. Id. at 2572-76 (Stevens, J., dissenting).
I. THE LMRDA AND ITS LEGISLATIVE HISTORY: THE ELUSIVE INTENT OF CONGRESS

A. The Language of the LMRDA

The language of the LMRDA reveals but does not resolve the overlap of rights and remedies between titles I and IV. Title I, which grants its protections as a “Bill of Rights,” contains certain provisions expressly related to union elections. Members are given “equal rights and privileges” to nominate candidates and vote in elections, subject to reasonable rules in the union’s constitution and bylaws. They are also given equal rights to attend meetings and participate in deliberations on union business, with a specific right to express views upon candidates in an election of union officers, subject to reasonable rules pertaining to the conduct of meetings and to the member’s responsibility “toward the organization as an institution.”

Other title I rights, although not expressly connected with elections, nevertheless can affect a member’s ability to participate in the union’s electoral

35. It does so emphatically, with this phrase appearing twice. See supra note 12. The significance of the allusion to the federal Constitution is uncertain. Some commentators argue that given the analogy to the Constitution, the courts have been overly broad in interpreting the LMRDA bill of rights. See, e.g., Beaird & Player, Free Speech and the Landrum-Griffin Act, 25 ALA. L. REV. 577 (1973). The authors argue that the Second Circuit’s decision in Salzhandler v. Caputo, 316 F.2d 445 (2d Cir.), cert. denied, 375 U.S. 946 (1963), is unduly permissive in interpreting § 101(a)(2) to prohibit a union from disciplining members for their criticisms of union officials, even when the criticisms may have been libelous. According to the authors, the LMRDA’s free speech provisions should be interpreted no more permissibly than the Constitution’s free speech provisions were in New York Times v. Sullivan, 376 U.S. 254 (1964), which supported only a qualified privilege of free speech. Beaird & Player, supra at 589-93. Other commentators attribute the greater breadth of the LMRDA directly to Congress. See Hickey, The Bill of Rights of Union Members, 48 GEO. L.J. 226, 230-32 (1959) (arguing that the statute’s language is more rigid and absolute than the Constitution’s and is therefore all the more intrusive into internal union activities). The Supreme Court has recently shown a preference for a restricted reading of the LMRDA’s free speech provision. See United Steelworkers v. Sadlowski, 457 U.S. 102, 111, reh’g denied, 103 S. Ct. 199 (1982) (scope of § 101(a)(2) not identical to scope of first amendment; union rules limiting members’ free speech need only be reasonable and need not pass stringent tests applied in first amendment cases).


37. Id.

38. LMRDA § 101(a)(2), supra note 15. The proviso of § 101(a)(2) necessitates a balancing of individual and institutional interests, but it is not clear from the language of the proviso what balance the courts should strike. Almost any union discipline could be rationalized on grounds of the member’s responsibility to the union, but the structure of tit. I and its similarities to the Constitution’s Bill of Rights suggest a strong statutory interest favoring the individual member. Atleson, supra note 6, at 443-44. Some courts have struck a balance extremely favorable to the member. See, e.g., Salzhandler, 316 F.2d at 445. For a thorough discussion of the inclination of the courts to give Salzhandler broad application, see Beaird & Player, supra note 35, at 588-606.
process. An obvious example is the freedom of speech and assembly guaranteed in section 101(a)(2), which directly affects both a candidate's ability to campaign for office and his supporters' ability to advance his candidacy.\textsuperscript{39} Less apparent, but no less important in relation to elections, are the statutory safeguards against improper disciplinary action.\textsuperscript{40} Union constitutions usually make the exercise of nominating, voting, and candidacy rights contingent upon a member's good standing, and often upon continuous good standing for a specified length of time.\textsuperscript{41} Disciplinary actions may have the effect of suspending or interrupting good standing, with a consequent loss of the member's election rights. Even if the substantive right itself is not expressly guaranteed by title I,\textsuperscript{42} the loss of the right can be brought within the reach of title I through the unlawful basis for the discipline\textsuperscript{43} or the procedural inadequacies affecting it. Procedural inadequacies include failure to serve the member with written specific charges, to give the member reasonable time to prepare a defense, or to afford the member a full and fair hearing, as required by section 101(a)(5).\textsuperscript{44}

The remedies created or preserved by title I implement section 101's posi-
tive grant and protection of a member's rights. The remedial provision is broadly worded to reach “any person” and “any violation” and to afford “such relief (including injunctions) as may be appropriate.” Section 102 is limited somewhat by section 101(a)(4), which prohibits the union from limiting the member's right to sue but also provides that “any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time)” within the union before seeking outside relief. However, the proviso, merely postpones and does not preempt the availability of the federal remedy. The scope of relief is extended further by section 103, which insures that the rights and remedies granted by title I are not interpreted to preempt those available under federal or state law or under the union's constitution and bylaws. The aggregate effect of title I is thus to provide a statutory basis for protecting individual interests that are threatened by assertions of institutional power over which the member—particularly a member aligned with a political minority within the union—has little, if any, control.

Title IV reformulates certain title I rights, but without any consistent pattern. In some instances, title IV merely gives the title I right a particularized meaning within the context of an election of officers. For example, title I's

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45. LMRDA § 102, 29 U.S.C. § 412 (1982). The Supreme Court later noted that the “appropriate relief” standard reflected Congress' intent to give the courts wide latitude in tailoring the remedy to the necessities of the case. Hall v. Cole, 412 U.S. 1, 13 (1973). But § 102 can also be interpreted to mean “only such relief as may be appropriate.” The Crowley Court utilized this type of limiting interpretation. See Crowley, 104 S. Ct. at 2571. For an extended discussion of § 102 in light of Hall and Crowley, see Quinn v. DiGiulian, 739 F.2d 637, 648-52 (D.C. Cir. 1984).


47. Initially, there was considerable uncertainty as to how to interpret the proviso, which seemed to alter the longstanding ability of the union to discipline a member for seeking outside relief before exhausting his internal remedies. According to Professor Cox, the statute failed to distinguish between two “radically different” kinds of limitations upon a member's right to sue—first, union-imposed limitations that made the member subject to expulsion if he brought suit without exhausting internal remedies; and second, rules of judicial administration under which a court would not hear a member's suit against the union unless he had exhausted internal remedies. Cox argues that only the first of these should be affected by § 101(a)(4). Cox, supra note 2, at 839-41. See also Berchem, supra note 13, at 17-26 (lengthy discussion of the questions raised by the proviso). The issue was subsequently decided, contrary to the Cox position, in NLRB v. Industrial Union of Marine & Shipbuilding Workers, 391 U.S. 418, 426 (1968), where the Court affirmed that it is the judiciary, and not the union, that has the discretion to require or waive the exhaustion of internal remedies. Despite this holding, unions continue to attempt to discipline members for failing to exhaust internal remedies. See, e.g., Pawlak v. Greenawalt, 628 F.2d 826 (3d Cir. 1980), cert. denied, 449 U.S. 1083 (1981) (§ 101(a)(4) violated when union assessed member for all litigation costs and expenses after member unsuccessfully sued union without exhausting internal remedies as required by union constitution).

principle of equal rights and privileges finds expression in title IV’s provisions pertaining to the use of membership lists for campaigning, the distribution of campaign literature, the mailing of election notices to all members, and the uniform application of candidate eligibility standards. In other instances, title IV appears to strengthen title I. Whereas section 101(a)(1) has been construed to guarantee only nondiscrimination and not the underlying substantive right to vote, title IV plainly grants the “right to vote for or otherwise support the candidate or candidates” of the member’s choice. The right to be a candidate, which is not stated in title I, is granted expressly in title IV. In still other instances, title IV recasts title I rights as institutional obligations. With respect to the right to nominate candidates, for example, title IV requires of the union that “a reasonable opportunity shall be given for the nomination of candidates.”

The lack of a consistent pattern to the changes in the wording of the rights defies any attempt to attach significance in terms of the broadening or narrowing of the statutory protections. Both section 101 and section 401 seem to protect individual members against abuses by their unions. The remedies available to

49. LMRDA § 401(c), 29 U.S.C. § 481(c) (1982).
50. Id.
51. Under LMRDA § 401(e), 29 U.S.C. § 481(e) (1982), the union must mail an election notice to each member at his last known home address not less than 15 days prior to the election. The Secretary of Labor interprets “member” broadly to include all members, not just those who are eligible to vote. See 29 C.F.R. § 452.99 (1984).
52. LMRDA § 401(e), 29 U.S.C. § 481(e) (1982), provides in part, “every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed)” (emphasis added).
53. The Court so held in Calhoon, 379 U.S. at 139. But see Berchem, supra note 13, at 10 (“to adopt an interpretation of this section which does not provide for effective equality in voting, . . . and which authorized pro forma observation of those rights which are granted, is singularly objectionable”). Calhoon could create a “pre-election void” in which there are no substantive rights under tit. I and no jurisdiction for the Secretary under tit. IV. Id. at 56.
54. LMRDA § 401(e), supra note 14. Indeed, § 401(e) arguably grants an absolute right to vote through its requirement that “[e]ach member in good standing shall be entitled to one vote.” See Cox, supra note 2, at 833-34, 843-44. However, the Secretary of Labor interprets § 401(e) in conjunction with § 101(a)(1) to allow the union to qualify the right to vote by “reasonable rules and regulations in its constitution and bylaws.” 29 C.F.R. § 452.85 (1984). One odd result of the Secretary’s interpretation is that a union may apparently postpone the right to vote until completion of a bona fide apprenticeship program, 29 C.F.R. § 452.89 (1984), even though some such programs last up to four years. See, e.g., UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, CONSTITUTION § 43 (1979). The result is anomalous. The right to run for office, as to which a more stringent restriction would logically be justifiable, can be subject to no more than a two-year membership requirement before the Secretary will deem the restriction unreasonable. See 29 C.F.R. § 452.37(a) (1984). Yet the more fundamental right—the right to vote—can be postponed for twice as long with impunity.
55. See supra note 52.
56. See supra note 14.
enforce the rights, however, provide a clearer illustration of the difference between title I and title IV.

The remedy created in title IV requires that a member seeking relief for the violation of any provision of section 401 must first exhaust the remedies available to him under the union's constitution and bylaws for three months, or pursue them for three months without obtaining a final decision. The member then has one month within which to file a complaint with the Secretary of Labor. Upon receiving a timely complaint, the Secretary must conduct an investigation. If the Secretary has probable cause to believe a violation has occurred and has gone unremedied, he must file suit within sixty days seeking an order to invalidate the defective election and conduct a rerun under his supervision. The court must issue such an order if it finds that the violation “may have affected the outcome” of the election. Under section 403, existing rights and remedies to enforce a union's constitution and bylaws “with respect to elections prior to the conduct thereof” are preserved, and the remedy through the Secretary of Labor is made the exclusive remedy “for challenging an election already conducted.” The statute provides, however, no further definition of “challenging an election” or “already conducted,” thus leaving uncertain the extent of preemption effected by the exclusivity provision of section 403.


58. LMRDA § 402(b), 29 U.S.C. § 482(b) (1982). The Supreme Court has interpreted § 402 as permitting the Secretary to determine, as a threshold matter to bringing suit, whether the alleged violation “probably infected the challenged election.” Wirtz v. Local 153, Glass Bottle Blowers Ass'n, 389 U.S. 463, 472 (1968). Thus, although not expressly so, the remedy in § 402 is in fact a post-election remedy. See 29 C.F.R. §§ 452.4-.5 (1984).

59. LMRDA § 402(c), 29 U.S.C. § 482(c) (1982). The Supreme Court has held that a prima facie case establishing a violation of tit. IV shifts the burden to the union to demonstrate that the violation did not affect the election outcome. Wirtz v. Hotel, Motel & Club Employees Union, Local 6, 391 U.S. 492, 508-09 (1968). Despite this presumption in his favor, however, the Secretary may choose not to file suit unless he believes the violation has affected the outcome. See Dunlop v. Bachowski, 421 U.S. 560, 570 (1975). A substantial number of violations thus go unremedied. Of the 2,171 election complaints processed by the Department of Labor during the period 1965-1978, 640 were closed because of insufficient evidence of effect on outcome. U.S. DEPT OF LABOR, LABOR-MANAGEMENT SERVICES ADMIN., COMPLIANCE, ENFORCEMENT AND REPORTING IN 1978 UNDER THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT 4 (1978).


61. A member's election-related complaint can be disruptive of a union's internal affairs
In contrast to title IV, the remedy provided in title I does not require the aggrieved party to take his complaint to an administrative agency. A title I complainant need only pursue internal remedies as required by section 101(a)(4) and file a civil action in federal court for “appropriate” relief. Unlike section 402, which spells out the specific remedy the court is to provide, section 102 leaves the remedy largely up to the discretion of the court. Further, unlike section 402, which makes relief contingent not only upon the finding of a violation, but also upon the finding that the violation may have affected the outcome of the election, section 102 requires only a showing that the plaintiff’s rights have been violated. The differences between the remedial provisions of titles I and IV suggest that Congress intended the two titles to serve different purposes. Title I, by giving the member more immediate access to statutory relief, serves the purpose of protecting individual rights. But the choice of a federal court, rather than administrative agency, as the forum for adjudicating those rights presupposes the exercise of judicial self-restraint and limits the scope of title I complaints to matters within the court’s judicial competence. The provisos of section 101 further limit judicial discretion by requiring deference to union rules so long as they are reasonable. Title IV, by contrast, protects individual rights only to the extent that violations of them may also have damaged the union members’ collective interest in conducting fair elections—a limitation reflected in the requirement that relief is available under section 402 only if the violation of title IV may have affected the election outcome. Although and yet not be a challenge to the election. See Kupa v. Yamamoto, 622 F.2d 449 (9th Cir. 1980) (a title I plaintiff argued successfully that his suit to compel the union to install him in the office for which he had successfully run was not precluded by § 403, even though the union’s refusal to install him was based on an issue—his ineligibility for office—that could have been the grounds for a tit. IV action). As for determining when an election is “already conducted,” the task is complicated because an election is actually a series of processes, such as naming the election committee, conducting nominations, campaigning, balloting, tabulating the results, and installing the winners. Summers, Judicial Regulation, supra note 7, at 1224-26; see also Crowley, 769 F.2d at 991-93.

63. LMRDA § 402, 29 U.S.C. § 482(c) (1982), provides in part that the court “shall declare the election . . . to be void and direct the conduct of a new election under the supervision of the Secretary” (emphasis added).
64. LMRDA § 102, 29 U.S.C. § 412 (1982), authorizes “such relief (including injunctions) as may be appropriate.”
68. See supra note 59. The Crowley Court recognized that “eliminating all title I relief . . . might preclude aggrieved union members from ever obtaining relief for statutory violations, since the more drastic remedies under Title IV” depend on a showing of an effect on the election outcome. 104 S. Ct. at 2569. Where the effect of a violation of title IV cannot be
title IV narrows the protections in that respect, it expands them in two others, first by sparing the member the costs of private litigation, and second by placing enforcement authority in the hands of an administrative agency whose expertise qualifies it to review substantive internal union matters that are beyond the expertise of the courts.

Although titles I and IV thus complement one another, the exclusivity language of section 403 prevents an overlap of jurisdiction in cases "challenging an election already conducted." The ambiguity of this phrase, however, causes the scope of title I and title IV to be uncertain. Some clarification, but only some, is offered by a review of the legislative history.

B. The Legislative History of the LMRDA

Congressional interest in legislation to regulate internal union affairs was accurately determined, as in cases involving the use of union funds to support candidates in violation of § 401(g), the court will normally grant the relief sought by the Secretary. See, e.g., Marshall v. Hotel & Restaurant Employees, Local 28, 105 L.R.R.M. (BNA) 3494 (N.D. Cal. 1980). In such cases, preclusion of the members' individual rights by the "may have affected the outcome" standard does not occur. But if the violation in question is the deprivation of the member's right to vote, the effect on outcome is objectively measurable. If the number of members who have been deprived of the right to vote is less than the successful candidate's margin of victory, the Secretary will decline to file suit. See, e.g., Teamsters, Local 705, 50-19408, 82-(LM)-117 (case administratively closed 1982), summarized in U.S. DEP'T OF LABOR, ELECTIONS DIGEST (SUPP. I), supra note 13, at § 940.600.

The ultimate question posed in such situations is what purpose society hopes to advance by regulating labor unions. If the purpose is primarily economic, the law can be more tolerant of the subordination of individual to institutional interests in an election of union officers. Under such a rationale, the continuity of union leadership, which protects the public interest in the uninterrupted flow of commerce, outweighs the member's interest in rerunning the election, with all the disruptions it would entail. But if society's purpose is also to preserve internal union democracy and enhance the dignity of the worker, then minority voting and unsuccessful candidacies have value beyond the immediate goal of winning the election. See Berchem, supra note 13, at 51. See also Note, Election Remedies Under the Labor-Management Reporting and Disclosure Act, 78 HARV. L. REV. 1617, 1624 (1965) ("union democracy will not be advanced if, when such a member's rights have been infringed, he is denied judicial relief merely because the violation did not affect the outcome of the election in question"); Summers, Judicial Regulation, supra note 7, at 1248 ("[o]pposition groups in unions frequently have no serious expectation of winning but seek only to voice a protest and perhaps build a base for future elections"). For a thorough discussion of the economic and democratic dimensions of the union's role, see Hartley, The Framework of Democracy in Union Government, 32 CATH. U.L. REV. 13, 50-62 (1982).

69. The use of the LMRDA's legislative history to interpret the statute is not without its detractors. One commentator has observed:

[T]he numerous questions of interpretation posed by [the LMRDA's] various provisions are likely to strain to the breaking point the established American legal habit of looking to the legislative history to ascertain legislative intent. . . . The record of the debate in Congress reveals a deliberate, if not extraordinary, effort to becloud, or clarify, or prejudge, as the case may be . . . . One might anticipate that under these
aroused by findings of the Senate Select Committee on Improper Activities in the Labor or Management Field (the McClellan Committee). The McClellan Committee’s extensive hearings had revealed “corruption, breach of trust, violence, abuse of power, denial of basic rights and democratic processes to union members,” and other improprieties. Among the Committee’s conclusions was a recommendation for legislation “to insure union democracy,” including periodic elections of officers and the use of secret ballots. Motivated in part by the McClellan Committee’s interim report, in part by a recognition that workers gain little if unionization merely substitutes the tyranny of the union for that of the employer, and in part by the antiunion animus of employer organizations, the Senate passed a bill in 1958 that would have required union financial disclosures and regulated union trusteeships and elections of officers. The bill died in the House, but Senator Kennedy introduced a revised version the following year. That bill was referred to the Senate Committee on Labor and Public Welfare, which added forty-six amendments, many of them at the urging of Senator Goldwater. The election provisions of the committee bill, S. 1555, guaranteed the right to nominate and vote, set maximum intervals between elections, and established general procedures for conducting elections. Enforcement of the election provisions was assigned to the Secretary of Labor, who was authorized to investigate alleged violations and supervise remedial elections. Like the final version of the statute, the committee bill preserved existing rights and remedies prior to the election and made enforcement by the Secretary the exclusive remedy for challenging the circumstances some courts will simply throw up their judicial hands and try to give the statute a ‘reasonable’ interpretation derived from its ‘four corners.’ Smith, supra note 2, at 197-98. Smith’s skepticism is a reminder that interpretations based on the legislative history should account not only for content but also for political motive.


72. Id.

73. See Summers, American Legislation, supra note 57, at 275-78; Cox, supra note 2, at 820-21.


77. S. 1555, supra note 76, at § 301.

78. Id. § 302.
pleted election. The bill contained, however, no individually enforceable bill of rights.

In reporting the bill out in this form, the committee passed over an administration bill that would have provided for enforcement of the election provisions through private civil action in state or federal court. The committee majority explained that its choice of enforcement by the Secretary of Labor would insure uniformity in the laws governing union elections. The majority also relied on the testimony of Professor Archibald Cox, who had testified that in addition to preserving uniformity, enforcement by the Secretary would centralize control of proceedings and would reduce the likelihood of vexatious litigation against the union on the one hand, and friendly private actions to foreclose the Secretary's jurisdiction on the other. Enforcement by the Secretary was also desirable, in Cox's opinion, because it removed the courts from the business of supervising union elections—a task for which he found them ill-equipped. What is most significant about the proposed enforcement procedure, however, is the unanimity with which the committee reported it to the Senate. Although deep political differences divided the committee on other portions of the bill, there were no dissenting comments on the issue of enforcement by the Secretary of Labor.

The committee bill's provisions for safeguarding the individual rights of union members proved far more controversial than the election enforcement

79. Id. § 303. See LMRDA § 403.
83. Cox testified as follows:
A court is . . . a clumsy instrument for supervising an election. The judicial process may be suitable for determining the validity of an election which has already been held; but if it is found invalid, or if no election has been held, judges have few facilities for providing an effective remedy. . . . The court has no tellers, watchers, or similar officials. It would become mired in the details of the electoral process. To appoint a master to supervise the election would delegate the responsibility, but the master would face many of the same problems as the judge. Probably it is the consciousness of these weaknesses that has made judges so reluctant to interfere with union elections, though apparently a few court-ordered elections have been held.
Id. at 133-34.
84. See especially the "Minority Views" portion of S. REP. No. 187, supra note 3, at 70, 104, 1 LEGISLATIVE HISTORY, supra note 3, at 466, 500, where the minority stated its satisfaction with the Secretary's role but expressed regret that a similar remedy was not available prior to the election.
scheme. The majority, espousing what it called "a general philosophy of legislative restraint," opposed detailed procedures and standards. In the majority's opinion, "such paternalistic regulation would weaken rather than strengthen the labor movement." Thus, with respect to safeguarding members' individual rights, the committee bill merely encouraged unions to adopt voluntary codes of ethical practices, with progress to be monitored by an "Advisory Committee on Ethical Practices." The advisory committee would report to the Secretary of Labor, who in turn would be required to report his recommendations to Congress in three years. Senators Goldwater and Dirksen, writing in a "Minority Views" section of the committee report, criticized the majority's approach as "full of 'gimmicks' intended to lull the public into believing [the legislation] lives up to its advance billing as a labor reform measure." They specifically cited the majority's failure to provide a federally enforceable "bill of rights" to guarantee freedom of speech, press, and assembly; equal treatment of all members by the union; and due process in disciplinary actions.

During the subsequent debate on the Senate floor, Senator McClellan, recalling his observations during his own committee's hearings, argued that the bill, in its present form, did not adequately protect union members' rights. He therefore introduced an amendment that added an enumeration of specific rights, including freedom from arbitrary financial exactions, protection of the right to sue, and a guaranteed right to inspect membership lists. Violators would be subject to civil suit by the Secretary of Labor and to criminal penalties.

The lines of political division in the Senate became clear from the ensuing debate on the McClellan proposal and a compromise amendment introduced...
by Senator Kuchel. The committee majority explained that it was not opposed to the rights themselves, but only to the creation of a federal remedy that, according to Senator Kennedy, would duplicate protections already available under state law, the committee bill, and the Taft-Hartley Act. When the McClellan amendment passed, however, by a single vote, southern lawmakers grew uneasy with the notion of expanding the authority of the federal government in the area of civil rights. To allay their fears, Senator Kuchel introduced two days later a hastily drafted substitute amendment. The Kuchel amendment added certain qualifying language to the McClellan rights, substituted private civil suits for suits by the Secretary of Labor, moved the criminal sanction to another title of the bill, and moved the right to inspect membership lists into the election provisions of what would become title IV. The amendment drew praise in the Senate for taking the federal bureaucracy out of the union member's bill of rights and leaving enforcement in private hands. The amendment, which was substantially identical to the bill of rights in the final statute, passed by a vote of 77 to 14 and became title I of the bill.

The enforcement provision of title I underwent little change in the House. The criminal penalties proposed by Senator McClellan were limited to reach only instances of the deprivation of statutory rights by force or violence. Along with this change and other minor variations in wording, the conference committee adopted the House version of title I. By contrast, the Senate and House differed over the title IV enforcement procedure. The House version would have permitted the member himself to bring suit for violations of title IV instead of requiring him to file a complaint with the Secretary of Labor. In the House's view, a losing faction in an election could challenge an election more effectively by using local counsel than by

94. 105 CONG. REC. 6482 (1959) (Sen. Kennedy), reprinted in 2 LEGISLATIVE HISTORY, supra note 5, at 1108.
95. See supra note 5.
96. Cox, supra note 2, at 833, observes that "[t]he draftsmanship left much to be desired, perhaps because of the haste and stress, the number of participants, and the priority of tactical acceptability over nicety of expression." See also Rothman, supra note 90, at 206-07.
97. Rothman, supra note 90, at 206-07; see also 105 CONG. REC. 6693-94 (1959), 2 LEGISLATIVE HISTORY, supra note 5, at 1220-21.
98. 105 CONG. REC. 6721, 6726 (1959) (statements of Sens. Joseph Clark (D - Pa.) & Estes Kefauver (D - Tenn.)), 2 LEGISLATIVE HISTORY, supra note 5, at 1233, 1238.
99. 105 CONG. REC. 6727 (1959), 2 LEGISLATIVE HISTORY, supra note 5, at 1239.
100. Rothman, supra note 90, at 208-09.
101. Id. at 208. See LMRDA § 610.
102. Rothman, supra note 90, at 209.
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relying on the Secretary as plaintiff and moving party.\textsuperscript{104} The House and Senate did agree, however, that once a court had found unremedied violations, the proper corrective measure should consist of a remedial election under the Secretary's supervision.\textsuperscript{105} The Senate version of the complaint procedure prevailed in conference, but the conference report supplied little explanation.\textsuperscript{106}

Although neither the Senate nor the House discussed in detail the conflict of remedies posed by titles I and IV, Congress was aware of the problem.\textsuperscript{107} AFL-CIO President George Meany raised the issue in his testimony before the Joint Subcommittee on Labor-Management Reform Legislation.\textsuperscript{108} President Meany complained that title I would confuse and weaken other provisions of the bill. Citing the possibility that both the "equal rights" of title I and the candidacy guarantee of title IV could be construed to protect the right to run for office, he questioned how title I related to title IV.\textsuperscript{109} In reply, Senator McClellan described the titles as "complementary"\textsuperscript{110} and referred to an earlier discussion on the same issue, in which Senator Kennedy had stated that "the bill of rights must be read in conjunction with the remainder of the bill."\textsuperscript{111} In another instance, the question arose as to whether the plaintiff candidate could bring a private action under section 401(c) to compel the distribution of campaign literature by the union pursuant to its statutory duty, if the election were completed before the court

\textsuperscript{104} Id. at 79, 1 LEGISLATIVE HISTORY, supra note 3, at 837 ("Supplementary Views" of Reps. Elliott, Edith Green (D - Or.), Frank Thompson (D - N.J.), Stewart Udall (D - Ariz.), and James O'Hara (D - Mich.)).

\textsuperscript{105} See S. REP. NO. 187, supra note 3, at 21, reprinted in 1 LEGISLATIVE HISTORY, supra note 3, at 417; H.R. REP. NO. 741, supra note 103, at 17, 1 LEGISLATIVE HISTORY, supra note 3, at 775.

\textsuperscript{106} H.R. REP. NO. 1147, 86th Cong., 1st Sess. 35 (1959), reprinted in 1 LEGISLATIVE HISTORY, supra note 3, at 934, 939.

\textsuperscript{107} See Note, Pre-election Remedies under the Landrum-Griffin Act: The "Twilight Zone" between Election Rights under Title IV and the Guarantees of Titles I and V, 74 COLUM. L. REV. 1105, 1108 (1974) ("congressional inattention to the interrelationship between the language and enforcement schemes of [t]itles I and V and those of [t]itle IV has created a 'twilight zone' of legal uncertainty where violations of the bill of rights and fiduciary obligation titles occur in the context of union elections"). Early scholarly commentary likewise did not discuss the conflict between titles I and IV in detail. See supra note 21.


\textsuperscript{109} Id. at 1484. Meany pointed out by way of example that both § 101(a)(1) and § 401(d) (§ 401(e) as finally enacted) could be construed as protecting the right to be a candidate. He asked how these provisions "tie in" with one another. Id.

\textsuperscript{110} Id. at 2284, 2286 (Sen. McClellan).

\textsuperscript{111} 105 CONG. REC. 6720 (1959), 2 LEGISLATIVE HISTORY, supra note 5, at 1232-33.
could act. Such a question presumes the existence of the impediment of section 403 exclusivity language barring relief in a private action once the election took place. The reply by Senator Javits expressed hope that the judicial proceedings in the private action would be conducted with reasonable speed because the member had a statutory right to go to court. Thus, the Senator's concerns suggest a recognition that once the election is completed, private remedies will become difficult if not impossible to obtain without encroaching on the Secretary's preemptive jurisdiction.

Legislative discussions such as these indicate that Congress knowingly settled for a statute containing overlapping rights, with the expectation that post-election challenges would be consolidated in, or preempted by, the suit by the Secretary of Labor. The duplicative rights reflect a legislative consensus that union members might need strong protections to deal with their unions. The remedies, in contrast, reflect the underlying political differences in Congress. Title I's remedy exemplifies the Senate committee minority's concern for providing broad, immediate relief for violations of individual rights. Title IV's remedy embodies the committee majority's desire to safeguard the majority will of the union members by limiting election suits to situations in which there has been an effect on the election outcome, and by assigning the power to enforce such disputes to the government agency most familiar with internal union affairs. Whatever the differences in legislative policy, and despite the split between the Senate and House on the manner of filing a title IV complaint, there was no expressed disagreement concerning the desirability of assigning to the Secretary of Labor the responsibility for supervising remedial elections. As the analysis of the judicial treatment of these issues reveals, courts after Calhoon have tended to focus on the unsettled issues of social policy, with a resulting confusion in the case law. In Crowley, however, the Supreme Court focused on a point of congressional harmony—the appropriateness of designating the Secretary of Labor as the exclusive supervisor of remedial elections of union officers.

112. Id. at 6728, 2 LEGISLATIVE HISTORY, supra note 5, at 1241 (Sen. Karl Mundt (R - S.D.)).
113. Id. at 6728-29, 2 LEGISLATIVE HISTORY, supra note 5, at 1241 (Sen. Jacob Javits (R - N.Y.)).
114. "Already conducted" apparently posed no ambiguity for at least one of the Act's framers, who commented: "Prior to the day of an election an individual can sue in a [s]tate. The day after an election the Secretary of Labor assumes jurisdiction." 105 CONG. REC. 6485 (1959) (statement of Sen. Kennedy). But see supra note 61.
115. See supra notes 59, 83 and accompanying text.
116. See supra notes 84, 105 and accompanying text; see also Crowley, 104 S. Ct. at 2567-68.
117. See infra text accompanying notes 159-219.
118. See supra notes 98-99, 105 and accompanying text.
II. CALHOON v. HARVEY: DEFINING THE LINES OF INSTITUTIONAL POWER

Calhoon v. Harvey,119 the United States Supreme Court's first interpretation of the LMRDA, involved a complaint filed by three members of a maritime union, alleging that the union had violated their right to nominate candidates as guaranteed by section 101(a)(1) of the Act.120 Specifically, the plaintiffs challenged two provisions in the union's bylaws, alleging that the provisions rendered them incapable of nominating the candidates of their choice. The challenged provisions prevented a member from nominating anyone but himself for office and required five years membership in the national union and 180 days sea time under a union contract in each of two of the three years preceding the election.121 The plaintiffs sought an injunction to prevent the union from conducting the election until it amended its nominating procedures and eligibility requirements.122

The United States District Court for the Southern District of New York dismissed the action, holding that the plaintiffs' allegations, even if true, did not show a denial of the equal right to nominate or vote as guaranteed by

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119. 379 U.S. 134 (1964). For commentary generally in agreement with Calhoon, see St. Antoine, Landrum-Griffin 1965-66: A Calculus of Democratic Values, 19 N.Y.U. ANN. CONF. ON LAB. 35, 39-43 (1967) (finding it "vaguely disquieting to see the best of scholars decrying a 'narrow and niggardly judicial approach' to the Act"); see also Note, Labor Law—Pre-Election v. Post-Election Relief Under the LMRDA, 44 N.C.L. REV. 483, 486 (1966) ("the Court supported a general congressional policy against intervention in union affairs"); Comment, Titles I & IV of the LMRDA: A Resolution of the Conflict of Remedies, 42 U. CHI. L. REV. 166, 179 (1974) (Calhoon should be construed narrowly, but some courts have applied it in a manner that leaves the bill of rights "virtually unenforceable in connection with union elections"). For contrary views, see Note, supra note 107, at 1108 (preelection relief is essential to congressional policy of ensuring member's right to "responsive, democratically-chosen exclusive bargaining representatives"); James, Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections, 13 HARV. C.R.-C.L. L. REV. 247, 309-10 (1978) (arguing that the preclusion of election-related title I claims in Calhoon is contrary to the legislative history and represents "the triumph of the administrative vision, as it focused all decisionmaking authority in the Secretary [of Labor]").

120. Calhoon, 379 U.S. at 135.

121. Id. at 135-36. The national union constitution also required that candidates for president must previously have been elected and served as a full-time union official. See 324 F.2d at 487. In subsequent litigation under title IV, eligibility requirements similar to those imposed by the union were found to violate § 401(e). See Wirtz v. Hotel Employees, Local 6, 391 U.S. 492 (1968) (unreasonable to require candidates to have prior service in lower office); Wirtz v. National Maritime Union, 399 F.2d 544 (2d Cir. 1968) (self-nomination, if the only method available for making nominations, deprives members of reasonable opportunity to nominate candidates); Hodgson v. Longshoremen Local 1655, 79 L.R.R.M. (BNA) 2893 (E.D. La. 1972) (eligibility requirement unreasonable when retroactively imposed (as was the 180-day requirement in Calhoon)). The Secretary of Labor has incorporated these rulings into his interpretative regulations. See 29 C.F.R. §§ 452.40, 452.54, 452.58 (1984).

section 101(a)(1). The United States Court of Appeals for the Second Circuit reversed, ruling that the plaintiffs had alleged a violation of section 101(a)(1) and that section 102 jurisdiction therefore existed. Noting the importance of the questions and the conflicting views already prevalent among the lower courts, the Supreme Court granted certiorari. The Court described the principal question not in terms of union members' rights under section 101, but in terms of the powers of the Secretary of Labor and the courts to protect the rights that the Act established. Thus, although one of the holdings of the case would clarify the nature of the rights conferred by section 101(a)(1), the Court's primary concern was to explicate the administrative and judicial responsibilities assigned by the statute.

Within its broader discussion of institutional power, the Court identified two narrow issues in the instant case—whether the plaintiffs' allegation that they had been unlawfully denied the right to nominate candidates stated a claim under section 101(a)(1), and if not, whether the combined effect of the union's candidate eligibility requirements and self-nomination rule could be considered by a court in determining whether a violation of section 101(a)(1) had occurred. With respect to the first issue, the Court construed the "equal rights" language of section 101(a)(1) as a prohibition against discrimination in the right to nominate or vote, not a guarantee of the underlying rights themselves. The Court found that the plaintiffs were not victims of disparate treatment, that the union rules in question had been uniformly applied, and that the plaintiffs had in fact taken full advantage of the uniform rules by nominating themselves for office. Since they had not shown a violation of the right protected by section 101(a)(1), the Court held, the district court's jurisdiction under section 101 could not be upheld.

The Court was not content, however, to rest its conclusion on the "equal rights" language alone. The Court bolstered its holding by reviewing section

123. Calhoon, 224 F. Supp. 800 (S.D.N.Y. 1963). See Calhoon, 324 F.2d at 487. The Supreme Court noted that although the lower courts had referred to the issue as "jurisdictional," they were in reality referring to whether the plaintiffs had stated a cause of action. Calhoon, 379 U.S. at 137 n.9.
124. Calhoon, 324 F.2d at 489-90.
125. Calhoon, 379 U.S. at 137.
126. The first sentence of the opinion stated: "This case raises important questions concerning the powers of the Secretary of Labor and the federal courts to protect rights of employees guaranteed by the Labor-Management Reporting and Disclosure Act of 1959." Id. at 135.
127. Id. at 138.
128. Id. at 139.
129. Id.
130. Id.
131. Id. at 138.
101(a)(1) against the overall statutory scheme of resolving internal union disputes. The Court noted that Congress had expressly qualified the rights granted by that section by making them subject to "reasonable rules and regulations" established by the union. Section 101(a)(1) thus reflected a congressional judgment that the unions, not the courts, were in the better position in the first instance to establish policies pertaining to internal union affairs. The Court also explained that although the statute gave the courts jurisdiction over questions of disparate treatment, title IV, which contained its own "separate and different" procedure for resolving election disputes, gave the Secretary of Labor responsibility for resolving substantive questions of candidate eligibility.

The Court elaborated on the significance of the "separate and different" title IV procedure in its discussion of the second issue in the instant case. The Court explained that in view of the plaintiffs' failure to allege discriminatory treatment, no cause of action would exist unless, as the Second Circuit had found, the combined effect of the union's nominating and eligibility rules could be considered in determining whether discrimination had occurred in violation of section 101(a)(1). Once again noting that eligibility rules were within the scope of title IV rather than title I, the Court concluded that violations of title IV were not relevant in determining a cause of action under title I. In distinguishing the two titles, the Court explained that title IV developed a comprehensive scheme governing elections of officers, covering such matters as terms of office, campaign rights, balloting procedures, and eligibility requirements. With one exception, section 402 established an exclusive method for enforcing title IV rights through the Secretary of Labor, whose special expertise Congress had chosen to utilize. In the Court's view, section 101 and title IV embodied a unified plan.

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132. Id. at 139. See supra note 14.
133. Calhoon, 379 U.S. at 139.
134. Id. at 138.
135. Id. at 139.
136. Id.
137. Id. at 140. The election provisions were comprehensive enough to provoke one of Professor Cox's few criticisms of the Act. He wrote that the election provisions "descend too far into detail, impairing the ideal of self-government, but there is no requirement which can seriously hamper a union's normal functioning." Cox, supra note 2, at 845.
138. LMRDA § 401(c), 29 U.S.C. § 481(c) (1982), permits direct pre-election suits by candidates to enforce their right to equal treatment in access to membership lists and distribution of campaign literature by the union. As with § 101(a)(1) of the Act, enforcement of these provisions of § 401(c) appears to require the court to adjudicate only the issue of disparate treatment.
139. Calhoon, 379 U.S. at 140. One commentator has taken exception to the Court's notion of the Secretary's expertise, pointing out that "[n]one of the functions assigned to the Secretary—investigation, prosecution, and supervision of judicial relief—indicate a congres-
for resolving internal union controversies—a plan whose priorities were first to allow the unions "great latitude" in settling their internal affairs, and where that does not succeed, to rely on the government agency most familiar with the subject matter, and finally to utilize the courts as a last resort.  

The Calhoon Court thus did more than resolve the issue of what constituted a cause of action under section 101(a)(1). The Court also set forth its views on the statute's apportionment of enforcement power. Section 101(a)(1) proved a perfect vehicle for expounding the Court's views, because of that section's neat separation of the predominantly legal question of disparate treatment from the more factual questions of the reasonableness of a union's nominating procedures and eligibility requirements. The values outlined by the Court suggest that the more an internal union dispute concerns matters requiring a detailed knowledge of internal union affairs, the professional belief in his 'special knowledge.' Note, Union Elections under the LMRDA, supra note 6, at 1285. Of course, to the extent the LMRDA imposed federal standards over matters never previously controlled by federal law, the Secretary of Labor simply had not had occasion to develop expertise in union officer elections prior to the passage of the Act. But the article ignores other factors as well. It ignores testimony before Congress that the courts were not the appropriate institution for the immediate enforcement of the election provisions. See supra note 83. It also overlooks the inherent complexity of the decisions the enforcing authority is required to make. See, e.g., the factors outlined in 29 C.F.R. § 452.36 (1983) for determining the reasonableness of candidacy qualifications. Finally, it does not acknowledge the advantages of assigning the responsibility for overseeing remedies to the party who is also responsible for developing interpretational guidelines under the election provisions. The Secretary of Labor is in the best position to understand his own interpretational regulations and to apply them correctly in a remedial election. By contrast, independent balloting agencies hired by unions or appointed by the courts sometimes prove unequal to the task. As Professor Summers notes:

The use of outside agencies such as the Honest Ballot Association or the Election Institute to conduct union elections may reduce but will seldom solve the problem of [union] political control. If they do no more than collect the ballots and count them, the most important parts of the election process are left in the hands of the incumbent officers. Seldom are such agencies given sufficient authority and responsibility over the entire process to prevent political manipulation of critical details. They put their imprint of integrity on an election whose integrity they cannot warrant and thereby lull the courts into the pleasant illusion that intervention is unnecessary.

Summers, supra note 7, at 1229. See Marshall v. Watchmen, International Union of Police, Local 2, 100 L.R.R.M. (BNA) 2744 (S.D.N.Y. 1979) (balloting agency failed to comply with candidates' reasonable requests to distribute campaign literature pursuant to LMRDA § 401(c)); Wirtz v. National Maritime Union, 284 F. Supp. 47 (S.D.N.Y.), aff'd, 399 F.2d 544 (2d Cir. 1968) (outside balloting agency supervised election involving unlawful self-nomination procedure, unreasonable endorsement requirement for candidacy, failure to provide absenteeballoting despite mobile nature of employment, failure to hold election of certain officers, and unlawful prior officeholding requirement).

140. Calhoon, 379 U.S. at 140.

141. Id. at 138.


143. See supra notes 135-40 and accompanying text.
more the courts initially should defer either to the unions themselves or to the Secretary of Labor's expertise under title IV.

An uncertainty that arises from *Calhoon* is the extent to which the Court's pronouncements on allocation of power are limited by the facts of the case. There are two such limitations. First, the case involved only section 101(a)(1)—a provision that is unique within section 101 in framing its entitlements in terms of equality of rights rather than in terms of the underlying substantive or procedural rights. Whereas the Court could draw a bright line between legal and factual issues in section 101(a)(1), the distinction is not so apparent in the other provisions of the bill of rights, where substantive or procedural rights, and not merely the uniform application thereof, are guaranteed.\textsuperscript{144} *Calhoon*’s deference to reasonable union rules and to the Secretary of Labor in substantive election matters provides a partial answer. Nonetheless, it would not appear to insulate the courts entirely from ever having to assess, for example, the substantive reasonableness of union rules to limit freedom of speech and assembly in a title I action.\textsuperscript{145} That right corresponds in section 101(a)(2) to the right to nondiscrimination in section 101(a)(1), and both are rights for which section 102 creates a private cause of action in federal district court. Yet *Calhoon*, if broadly construed, would disfavor title I jurisdiction over disputes whose resolution required some expertise in internal union affairs. *Calhoon* could, in effect, foreclose title I jurisdiction over much of the bill of rights outside section 101(a)(1). The better reading of *Calhoon*—better because it preserves at least the possibility of jurisdiction over the substantive rights protected in the bill of rights—is to limit *Calhoon* to situations involving a conflict between section 101(a)(1) and title IV.

The second factual limitation of *Calhoon* concerns the Court's statement that jurisdiction under section 102 depended "entirely" upon whether the plaintiffs' complaint showed a violation of section 101(a)(1) rights.\textsuperscript{146} The Court devoted much attention to the language of section 101(a)(1) but little


\textsuperscript{145} Under § 101(a)(2) of the LMRDA, 29 U.S.C. § 411(a)(2) (1982), the right to free speech and assembly is made subject to reasonable union rules. See supra note 38 and accompanying text; see also United Steelworkers v. Sadlowski, 457 U.S. 102 (1982) (where the outcome rested on the Court's assessment of whether union rules prohibiting campaign contributions from outside the union were a reasonable restriction of § 101(a)(2) rights).

\textsuperscript{146} *Calhoon*, 379 U.S. at 138.
to the language of section 102.\textsuperscript{147} That section, by its terms, could be construed as containing two prerequisites for relief: first, that the alleged violation be a violation of title I; and second, that the remedy sought by the plaintiff be "appropriate."\textsuperscript{148} It is not clear from the Court's decision how much consideration, if any, the Court meant to give to the second prerequisite. The Court's statement that section 102 jurisdiction depended "entirely" on the existence of a valid section 101(a)(1) allegation could mean that, as a general principle, the remedy sought will not be a determinative factor for jurisdiction. Alternatively, it could mean that in the circumstances of this particular case, the remedy being sought was appropriate and that jurisdiction would therefore lie if the plaintiffs had also stated a valid cause of action.

A discussion of the remedy would have entailed essentially a repetition of the Court's analysis of the plaintiffs' basic allegation. The injunction the plaintiffs sought would have required the court not only to postpone the election, but also to adjudge the reasonableness of the changes in the union's nomination procedures and eligibility rules.\textsuperscript{149} The Court had already explained that the statute delegated decisions about substantive election procedures to the Secretary of Labor.\textsuperscript{150} The remedy sought by the plaintiffs thus suffered from the same defect as their attempted section 101(a)(1) claim—both would have involved the district court in matters that were beyond its statutorily defined judicial competence. Therefore, in stating that jurisdiction in this case depended entirely on whether the plaintiffs stated a valid section 101(a)(1) claim, the Court may have perceived that so far as the proper forum for resolving the dispute was concerned, the remedy was merely the reciprocal of the claim, and both were outside the institutional powers assigned to the courts by the statute. In any event, the ambiguity on this question does not affect the holding of the case, which is that the court should dismiss a complaint if the plaintiff does not state a valid claim, not that the court will necessarily have jurisdiction merely because the plaintiff does state a valid claim.

A final point to be noted about \textit{Calhoon} is that the Court's dismissal for failure to state a claim did not rest on the exclusivity language of section 403 of the Act. The plaintiffs' claim failed in the first instance because of the

\textsuperscript{147} The Court mentioned § 102 only twice, and then only for the purpose of identifying the jurisdictional provision's location in the statute. See \textit{Calhoon}, 379 U.S. at 138, 140.

\textsuperscript{148} LMRDA § 102, 29 U.S.C. § 412 (1982), provides in pertinent part: "Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate."

\textsuperscript{149} \textit{Calhoon}, 379 U.S. at 136. See supra note 122 and accompanying text.

\textsuperscript{150} See supra notes 136-40 and accompanying text.
failure to state a cause of action under section 101(a)(1), not because of any preemptive effect of section 403. It was not until after finding that the plaintiffs had not stated a cause of action that the Court discussed the title IV remedy, noting that it was the exclusive method for protecting rights guaranteed by that title. The Court thus alluded to section 403 to illustrate the consistency between its interpretation of section 101(a)(1) and the statute’s scheme of allocating power between the courts and the Secretary of Labor. The Court did not, however, offer a detailed interpretation of section 403.

In retrospect, Calhoon is a peculiar combination of the narrow and the broad. The Court decided the case on narrow grounds, providing only a statement of when a cause of action did not exist, and not of when jurisdiction did. Since this was its first interpretation of LMRDA, however, the Court also took the occasion to enunciate general policy guidelines concerning the allocation of power between the courts and the Secretary of Labor. Under the facts of the case, the Court made it clear that section 101(a)(1) protects only against disparate treatment, that violations of title IV are irrelevant in determining jurisdiction under title I, and that the court must dismiss the action if no title I claim is stated. Beyond these facts, the Court’s decision spoke in broader terms, suggesting that the more an issue depends on substantive knowledge of internal union affairs for its resolution, the less inclined the courts should be to intervene. The decision did not specifically reach the bill of rights beyond section 101(a)(1), nor did it purport to interpret the exclusivity clause of section 403. Further, it left unresolved, or resolved only silently, the role of the appropriateness of the remedy for determining title I jurisdiction. It is when these questions arise in the context of an election of officers that the courts after Calhoon prove most uncertain about the interplay between titles I and IV.

III. JURISDICTION IN THE CALHOON-CROWLEY INTERVAL

A. Identifying the Cause of Action

The courts generally have had little difficulty in applying the Calhoon test

151. Calhoon, 379 U.S. at 140.
152. Id. at 139-41.
153. Id. at 139, 141.
154. See supra notes 140-43 and accompanying text.
155. Calhoon, 379 U.S. at 139.
156. Id. at 139-40.
157. Id. at 138-39.
158. Id. at 139-40.
for determining the existence of a section 101(a)(1) cause of action.\textsuperscript{159} The straightforwardness of the test, however, sometimes has been obscured by the desire of the court to reach a result that was in all respects fair to the plaintiff. In one such case, \textit{Turner v. Dempster},\textsuperscript{160} the United States District Court for the Northern District of California found a valid title I cause of action in a member's complaint that a maritime union's rule requiring six years on-deck experience as a prerequisite to the right to vote in matters other than elections of officers was unreasonable within the meaning of section 101(a)(1).\textsuperscript{161} The Secretary of Labor had previously notified the union that the six-year requirement would be deemed an unreasonable and therefore unlawful restriction on the right to vote in elections of officers as guaranteed by title IV of the LMRDA.\textsuperscript{162}

The court, noting that the plaintiff's claim was not a title IV matter because it pertained to voting in union referendums rather than in elections of officers, held that in view of the LMRDA's overall purpose of insuring union democracy, some provision of the Act must furnish the protection that title IV would otherwise have provided.\textsuperscript{163} The court identified section 101(a)(1)

\begin{itemize}
\item \textsuperscript{159} For cases wherein a cause of action was stated, see Bunz v. Moving Picture Machine Operators, 567 F.2d 1117 (D.C. Cir. 1977) (ineligible members permitted to vote in referendum); Depew v. Edmiston, 386 F.2d 710 (3d Cir. 1967) (employment requirement nonuniformly applied to disqualify member from candidacy); Stettner v. International Printing Pressmen, 278 F. Supp. 675 (E.D. Tenn. 1967) (union counted votes in referendum even though not cast in accordance with union rules).
\item For cases where no cause of action was found, see Hofmann v. Schaefer, 648 F.2d 934 (4th Cir. 1981) (uniformly applied union rule rendered plaintiff ineligible for office); McNail v. Amalgamated Meat Cutters, 549 F.2d 538 (8th Cir. 1977) (same); Amalgamated Clothing Workers, Rank and File Comm. v. Amalgamated Clothing Workers, Philadelphia Joint Bd., 473 F.2d 1303 (3d Cir. 1973) (same); Davis v. Turner, 395 F.2d 671 (9th Cir. 1968) (same).
\item 569 F. Supp. 683 (N.D. Cal. 1983), aff'd, 743 F.2d 1301 (9th Cir. 1984).
\item Id. at 686. The union's rule did not distinguish between voting in elections of officers and voting in other union referendums. \textit{Id.} at 685-86. The Secretary would normally tolerate the postponement of the right to vote until a member has established a relationship with the union by maintaining good standing for a reasonable length of time, such as six months or one year. 29 C.F.R. § 452.88 (1984).
\item 569 F. Supp. at 688. That the LMRDA was not intended to be a cure-all seems clear from §§ 103, 403, and 603, 29 U.S.C. §§ 413, 483, 523 (1982), which preserve the rights and remedies otherwise available under state and federal law. \textit{Cf.} Adams-Lundy v. Association of Professional Flight Attendants, 731 F.2d 1154, 1159-60 (5th Cir. 1984) (noting Congress' general preference for extrajudicial resolution of labor union disputes). The \textit{Turner} court faced the dilemma of either (1) finding a valid cause of action and thus running afoul of \textit{Calhoon} or (2) dismissing for failure to state a claim and thus leaving the member without a federal remedy. Under an interpretation less strict than Justice Black's in \textit{Calhoon}, "equal rights" could encompass not only the discriminatory application of union rules, but also the discriminatory effects of the rules regardless of whether they are uniformly applied. With § 101(a)(1) so construed, the Court in \textit{Calhoon} could still have dismissed the action on jurisdictional grounds by reason of the preemptive effect of § 403. Such a ruling would have preserved, or at least would not have precluded, § 101(a)(1) challenges to the substantive reasonableness of election rules.
\end{itemize}
as the only section that could reasonably be construed to apply to referendums. The court then found that the plaintiff had made the requisite discrimination charge inasmuch as he had challenged an eligibility rule that made an unreasonable distinction between members with more than six years sea time and members with less. The court did not mention, however, that as with the five-year rule in Calhoon, the "discrimination" alleged here occurred not in the application of the rule, but in its effect on the members. Calhoon had specifically declined to look beyond the application of the rule. Further, there was nothing in Calhoon to suggest that the Court's refusal to find a cause of action was contingent on the availability of relief in some other forum, or to suggest that had no other forum been available, the Supreme Court would have broadened its interpretation of section 101(a)(1) to reach discriminatory effects as well as discriminatory application. Under the Calhoon rationale, such broadening would have taken the Court beyond its statutorily defined area of competence.

The irreconcilability of Turner and Calhoon places in perspective the role that the concept of fairness plays after Calhoon in the Act's scheme for resolving internal union disputes. The standard of fairness appears in section 401(c), which requires that the union provide adequate safeguards to insure a fair election of officers. That standard has no express counterpart outside the context of an election of officers. Calhoon, however, forecloses title I relief in such actions and forces the member to rely on intra-union or state remedies. Resort to the former may prove futile. See, e.g., Wood v. Dennis, 489 F.2d 849, 856-57 (7th Cir. 1973), cert. denied, 415 U.S. 960 (1974). As for state courts, it is difficult to understand why they should be any more institutionally competent than federal courts to adjudicate such disputes. Institutional expertise at that point would cease to be a jurisdictional factor. At bottom, then, Calhoon embodies a policy of narrow construction of federal court authority, under which the courts will reach the merits of the case only to the extent the LMRDA unambiguously authorizes them to do so. Ambiguities such as "equal rights" will be resolved in favor of minimal involvement by the federal judiciary.

Elsewhere, Justice Black would state:

I believe that both the making and the changing of laws which affect the substantial rights of the people are primarily for Congress, not this Court. Most especially is this so when the laws involved are the focus of strongly held views of powerful but antagonistic political and economic interests. The Court's function in the application and interpretation of such laws must be carefully limited to avoid encroaching on the power of Congress to determine policies and make laws to carry them out.

Boys Markets, Inc. v. Retail Clerks Local 770, 398 U.S. 235, 256-57 (1970) (Black, J., dissenting). In Calhoon, Justice Black's strict constructionism, combined with the statute's express restrictions on intervention in internal union affairs, see supra note 6, overshadowed whatever significance might otherwise have been attached to the bill of rights as an expression of Congress' desire for broader protections of union members' rights under title I.

164. 569 F. Supp. at 688.
165. Id. at 689.
166. Id. See supra notes 129-31 and accompanying text.
in section 101(a)(1), which requires of union rules only that they be reasonable. Under Calhoon's narrow construction of section 101(a)(1), the difference between titles I and IV could be deemed to reflect a congressional intent to subject union officer elections and other internal union voting to different degrees of outside scrutiny. The Turner court, believing that the degree of scrutiny set by Calhoon was too lenient here in that it would leave the plaintiff without a federal remedy, preferred a slightly broader interpretation of section 101(a)(1)—one that, although not dispensing with the standard of reasonableness, at least enabled the court to apply that standard to effectuate the overall statutory goal of insuring union democracy. The Turner court parted company with Calhoon in this respect, but it followed Calhoon's scheme of institutional power by the deference it gave to the Secretary of Labor's determination that the union's voter eligibility rule was an unreasonable restriction on the right to vote in an election of officers. Thus, although Turner involved voting outside the context of an election of officers, it did nonetheless represent an attempt by the court to harmonize the rights conferred by title I with the institutional values of title IV.

B. Schonfeld v. Penza: Title I Jurisdiction and the Suppression of Dissent

The uncertainty of the interplay between titles I and IV becomes apparent in title I cases that raise issues other than the existence of a section 101(a)(1) cause of action. In Schonfeld v. Penza, the controversy expanded to include section 101(a)(2). The United States Court of Appeals for the Second Circuit upheld jurisdiction over a member's complaint that the union violated his free speech and association rights under section 101(a)(2) when it removed him from office and barred him from seeking office for a period of five years. Schonfeld, the member in question, had long been the leader of an insurgent faction within the district union. He had unsuccessfully run for office ten years prior to the filing of the instant action. He later ran successfully in a court-ordered election held for the purpose of terminating a trust...
teership that the court found had been established in bad faith to keep the previous incumbent group in power.\textsuperscript{173} Although Schonfeld occupied the chief executive office of the union, the infighting between him and the other faction continued, culminating in union disciplinary charges against him.\textsuperscript{174} A union trial board convicted him of bypassing an agreed-upon procedure for assigning work to locals within the district and of misrepresenting facts to the district’s Council of Delegates.\textsuperscript{175}

Schonfeld’s suit alleged that his subsequent removal from office and disqualification from candidacy violated the members’ section 101(a)(1) right to nominate candidates and vote in elections; their right to express their views, as guaranteed by section 101(a)(2); and the procedural safeguards in union disciplinary proceedings, as guaranteed by section 101(a)(5).\textsuperscript{176} The Second Circuit reversed the district court’s assertion of jurisdiction over the section 101(a)(1) claim, ruling that challenges to Schonfeld’s removal from office and disqualification were within the scope of the substantive nominating and candidacy rights guaranteed by section 401(e) of the Act, and that the proper avenue of relief was, therefore, to pursue internal union remedies and file a complaint with the Secretary of Labor.\textsuperscript{177} The court also noted that Schonfeld’s section 101(a)(1) claims did not involve the infringement of an “equal right,” and that under \textit{Calhoon}, Schonfeld therefore had not stated a cause of action under section 101(a)(1).\textsuperscript{178} As to the section 101(a)(2) claim, however, the court found that in view of this union’s history of internal strife, the actions taken against Schonfeld could constitute a form of intimidation of the membership through reprisal against Schonfeld and others for their efforts to change union procedures.\textsuperscript{179} The court found that unlike denials of voting and election rights, which the LMRDA assigned to title IV, the alleged infringement of the free speech and association rights did not require a title IV appeal to the Secretary of Labor.\textsuperscript{180}

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.} at 901 n.2.
\item \textit{Id.} at 901 n.1. The Second Circuit commended Judge Brieant for his attempts to end the infighting. The court observed, however, that “[l]ike the Hatfields and McCoys, . . . it appears that District Council No. 9 prefers to keep on ‘feudin’ and fusin’ and a-fightin.’ ” \textit{Id.} at 901 n.2.
\item \textit{Id.} at 901 n.1.
\item \textit{Id.} at 901-02.
\item \textit{Id.} at 902-03.
\item \textit{Id.} at 903.
\item \textit{Id.}
\item \textit{Id.} The court also upheld the district court’s jurisdiction over the § 101(a)(5) claim. The Second Circuit agreed with holdings in other circuits “that title I . . . protects the union-member relationship, but not the union-official relationship.” \textit{Id.} at 904. Therefore, the district court properly asserted jurisdiction over the claim insofar as it pertained to the actions rendering Schonfeld, as a member, ineligible to run for office. \textit{Id.} The Supreme Court has
\end{enumerate}
\end{footnotesize}
If the Schonfeld court had said no more with respect to section 101(a)(2), the decision would have typified the conventional analysis of that section.\(^{181}\) The court, however, fearing that its holding might be construed to take a case out of title IV merely because the plaintiff had appended a free speech allegation to what was essentially an election complaint, devised a test for reconciling the competing values of the title I rights and the title IV procedural requirements.\(^{182}\) According to the court, title I intervention in actions abridging both titles I and IV should be limited to cases in which the alleged violations could be “fairly said, as a result of established union history or articulated policy, to be part of a purposeful and deliberate attempt by union officials to suppress dissent within the union.”\(^{183}\)

That the Schonfeld court felt compelled to narrow the reach of section 101(a)(2) suggests a misreading of the Calhoon decision. The holding in Calhoon concerned section 101(a)(1), not section 101(a)(2) or title IV.\(^{184}\) The Schonfeld court, however, interpreted Calhoon as supportive of the narrowing of title I rights when they are abridged in the context of an election of union officers.\(^{185}\) In reality, Calhoon merely compelled the plaintiff to state a valid cause of action based on a right protected by title I.\(^{186}\) In a section 101(a)(1) complaint, the protected right is nondiscrimination, and a member must therefore allege discrimination in order to state a valid claim. By analogy, the protected rights for section 101(a)(2) complaints are the rights to free speech and assembly, and a plaintiff would state a valid claim by alleging the infringement of any of these particular rights. In Calhoon, the scope of the right to nondiscrimination did not become more restricted merely because title IV may also have protected the same right. The threshold confirmed that title I protects members as members, but does not protect their status as union officers or employees. Finnegan v. Leu, 456 U.S. 431, 438 (1982).

\(^{181}\) Courts generally have construed § 101(a)(2) broadly. The leading case is Salzhandler v. Caputo, 316 F.2d 445 (2d Cir.), cert. denied, 375 U.S. 946 (1963), where the same court ruled that a union could not discipline a member for criticizing union officials, even if his statements may have been libelous. The breadth accorded § 101(a)(2) in Salzhandler has been criticized. See Beard & Player, supra note 35, at 589-93. Nevertheless, the case has been “religiously followed.” Id. at 592 n.75 (collecting authority). The Second Circuit’s insistence on narrowing § 101(a)(2) in Schonfeld is thus all the more puzzling because of the broad interpretation it gave the same provision in Salzhandler. Further, the Second Circuit recently reaffirmed Salzhandler in Petramale v. Laborers International Union of North America, Local 17, 736 F.2d 13 (2d Cir. 1984).

\(^{182}\) 477 F.2d at 903-04.

\(^{183}\) Id. at 904.

\(^{184}\) See supra notes 127-28, 151-53, 155-57 and accompanying text.

\(^{185}\) 477 F.2d at 903.

\(^{186}\) See supra notes 146-50 and accompanying text. Without such a claim, jurisdiction could not be established.
old consideration was to state a valid claim. Calhoon preserved with precision the rights conferred by section 101(a)(1).

Schonfeld is inconsistent with Calhoon in two respects. First, Schonfeld narrows the scope of a title I right by imposing a restrictive test that would not apply if a title IV issue were not also implicated.\(^\text{187}\) Schonfeld thus attributes greater preemptive effect to the exclusivity provision of section 403 than did Calhoon, which made only passing reference to it.\(^\text{188}\) Second, Schonfeld's test for determining jurisdiction bypasses the allocation of institutional power delineated in Calhoon. Under Schonfeld, jurisdiction depends not on the inherent capability of the court to decide the question presented, but rather on the existence of a deliberate attempt to suppress dissent within the union. In essence, jurisdiction is not contingent on judicial values such as institutional competence, but on the legislative and social values underlying the Act.

Notwithstanding this shift in the basis for determining jurisdiction, Schonfeld does represent one of the few judicial attempts to reconcile the jurisdictional conflict between titles I and IV. In contrast to Calhoon, where the disposition of the action rested on title I alone, Schonfeld expressly viewed its section 101(a)(2) test as a reconciliation of the competing values of the

\(^{187}\) See Comment, \textit{Titles I & IV of the LMRDA}, supra note 119, at 174 ("The effect of Schonfeld's additional requirement is a partial substantive preclusion of section 101(a)(2) claims."). \textit{See also} Driscoll v. International Union of Operating Engineers, Local 139, 484 F.2d 682 (7th Cir. 1973) (relying on Schonfeld to deny jurisdiction over member's claim that union rule requiring candidates for office to execute non-Communist affidavit violated § 101(a)(2)). Courts do not limit their use of the Schonfeld test to jurisdictional issues or to § 101(a)(2). In Adams-Lundy v. Association of Professional Flight Attendants, 731 F.2d 1154 (5th Cir. 1984), an eleven-member majority of a politically divided union governing board sought injunctive relief under § 102 after the remaining nine board members had suspended them from office. The suspension vote, in which the minority prohibited the majority from participating, resulted from the majority's refusal to vote in support of certain resolutions that the minority deemed a "litmus test" of union loyalty. \textit{Id.} at 1156. In discussing the plaintiffs' claim that the membership's right to vote had been thwarted by the action of the board's minority faction, the Fifth Circuit, apparently alluding to the "equal rights" standard of § 101(a)(1), noted that a similar claim had been rejected in Schonfeld because it was not the type of direct interference with voting rights comprehended by the Act. \textit{Id.} at 1159. Without otherwise distinguishing § 101(a)(1) from § 101(a)(2), however, the court also applied the Schonfeld jurisdictional test to the voting rights claims of the plaintiffs. The Adams-Lundy court found that although the plaintiffs alleged that the defendants' conduct was antidemocratic, there was no claim that the defendants were "attempting to dismantle the union's electoral system" or that members who opposed the minority faction were "suppressed or threatened with reprisals." \textit{Id.} Therefore, the court concluded, "there has been no infringement of the basic rights of membership protected by §§ 101 and 102." \textit{Id.} Thus the Schonfeld test, which the Second Circuit had developed to resolve a jurisdictional issue in a § 101(a)(2) matter, became for the Fifth Circuit a basis for analyzing the substantive issue in a § 101(a)(1) claim.

\(^{188}\) \textit{See supra} notes 151-52 and accompanying text.
two titles. But the values it perceived—epitomized in the court’s phrase “democratic spirit”—were those that Calhoon treated as having been reconciled, to the extent possible, during the legislative debate. Schonfeld was thus a step towards reconciling titles I and IV, but it was a step in a different direction from Calhoon, for it was based on considerations of social policy rather than institutional power.

C. Kupau v. Yamamoto: The Race to the Courthouse

The conflict between titles I and IV emerged in full form in Kupau v. Yamamoto, a consolidation of a post-election title I suit on behalf of a successful candidate and a title IV suit by the Secretary of Labor in response to a complaint from one of the candidate’s opponents. The title I plaintiff, Kupau, won election to the office of financial secretary-business representative of Carpenters Local 745. Before his installation, however, the national union president ruled him ineligible on the basis of an employment requirement in the union constitution. That ruling conflicted with a ruling Kupau’s supporters had obtained from the local election committee prior to the election. The union refused to install him and ordered a runoff election between the other previously nominated candidates. Kupau and his supporters filed suit under section 101(a)(1), alleging that the union’s inconsistent application of its eligibility rules, as well as the plan to hold a new election without reopening nominations, deprived them of their equal right to nominate and vote.

189. Schonfeld, 477 F.2d at 904.
190. Id. at 903.
191. Justice Black based his majority opinion in Calhoon on the language and structure of the statute, without delving into the legislative history. 379 U.S. at 141. The concurring opinion was less satisfied that the statute on its face resolved the underlying political differences. Id. at 144 (Stewart, J., concurring).
192. 622 F.2d 449 (9th Cir. 1980).
193. Id. at 452.
194. The union constitution required that each candidate work at the trade or depend on the trade for a livelihood. Kupau’s eligibility was questionable because he had been working as a project manager of a housing development, which did not entail working with carpentry tools. Id. at 452. The Secretary of Labor’s regulations state that working-at-the-trade requirements are “ordinarily reasonable,” and that the union’s interpretation of its constitution and rules will be accepted unless the interpretation is “clearly unreasonable.” 29 C.F.R. §§ 452.3, 452.41 (1984).
195. 622 F.2d at 452. The local election committee ruled Kupau eligible based on an examination of “additional materials describing Kupau’s duties and responsibilities.” Id.
196. Id. at 452, 453-54.
197. Id. at 453-54. Kupau also filed a complaint with the Secretary of Labor under LMRDA § 402(a), protesting his disqualification by the national president. The Secretary declined to file suit, concluding that: (1) the national president’s interpretation of the constitution was not “clearly unreasonable,” 29 C.F.R. § 452.3 (1984), and was therefore not unlawful;
The United States District Court for the District of Hawaii ordered Kupau installed, whereupon his leading opponent, Ito, filed a complaint with the Secretary of Labor under section 402. The Secretary filed suit to compel a new election, alleging that the union had violated title IV by allowing Kupau to be a candidate and hold office despite his constitutional ineligibility. The district court denied Kupau's motion to intervene in the title IV action but stayed that action pending his appeal of the denial of intervention. The United States Court of Appeals for the Ninth Circuit upheld the injunctive relief granted in the title I action and dismissed the title IV suit.

The Ninth Circuit first discussed whether title I jurisdiction existed. Citing Calhoon, the court noted that a federal district court lacked jurisdiction in the absence of a valid claim under section 101(a)(1). The title I plaintiffs here had stated a valid claim, the court found, inasmuch as they had complained of the uneven application of eligibility qualifications, and not merely that the qualifications had been evenly applied but were of disparate impact. Disagreeing with the Secretary of Labor, the court found that the main concern of the claim was discrimination and not substantive eligibility requirements, and that characterizing the claim in this manner brought it within the scope of title I. In so ruling on the cause of action, the court adhered to the guidelines in Calhoon, which had classified claims according to the court's statutory competence to decide them. In deciding the question of jurisdiction, however, the Kupau court was required to go beyond Calhoon, in which dismissal had been based on plaintiffs' failure to state a cause of action under section 101(a)(1). The contrary finding in Kupau—that the plaintiffs had stated a cause of action—gave rise to the further question whether any other factors need be considered that might preempt the court's title I jurisdiction.

and (2) the evidence established that Kupau was in fact a supervisor and was therefore ineligible under the union constitution. U.S. Dep't of Labor, Statement of Reasons for Dismissing the Complaint of Walter H. Kupau 2-3 (Office of Labor-Management Standards Enforcement case no. 73-1066 (1979)).
The potential impediment to title I jurisdiction for the Kupau court was title IV, with its underlying policy of reliance on the Secretary of Labor and its exclusive remedy provision. The Ninth Circuit reasoned that despite the Calhoon Court’s failure specifically to state that charges of disparate treatment in eligibility requirements could properly be brought under section 101(a)(1), the Supreme Court had sought to distinguish challenges to the substantive eligibility rules from challenges to the application of such rules, with the latter being a valid claim for relief under section 101(a)(1). In this respect, the Ninth Circuit’s conclusion was consistent with Calhoon. Calhoon, however, had described jurisdiction on the basis of institutional capabilities, allowing the more substantive election questions to fall within the Secretary of Labor’s area of responsibility. The Kupau court, in contrast, focused almost exclusively on the nature of the claim, paying little heed to the questions of institutional power that underlay the Supreme Court’s characterization of the claims. The Ninth Circuit noted that total preemption of title I relief by title IV would be at odds with the legislative intent of title I, which was to augment title IV, not to be subordinate to it.

For the court, the crucial inquiry was whether a member had been subject to disparate treatment in the exercise of title I rights. If he had, the court held, title IV claims would not preempt his title I claim. The court bolstered its conclusion by noting that although section 403 of the Act made section 402 the exclusive remedy for challenging an election that had already been conducted, the plaintiffs’ claim here had not ripened until after the election had been completed. Drawing on the legislative history, which revealed that title I had been added to enlarge members’ rights, the court held that the plaintiffs should not be denied relief merely because the union had waited until after the election “to take action effectively disenfranchising a majority of the electorate."

Throughout this argument, the court drifted further away from the institutional analysis endorsed by Calhoon and into an analysis based on the Act’s overall goal of protecting members against inequitable treatment by their union. The court did not discuss whether, notwithstanding the apparent unfairness with which Kupau had been treated, the resolution of the dispute would involve judgments that the Secretary of Labor, rather than the court, might be better equipped to make. Specifically, when the district

208. 622 F.2d at 454-55.
209. Id. at 454.
210. Id. at 455.
211. Id. (citing Depew v. Edmiston, 386 F.2d 710, 712 (3d Cir. 1967)).
212. Id.
213. Id. at 456. See supra notes 85-99 and accompanying text.
court ordered Kupau's installation, the court had to determine not only whether disparate treatment had occurred, but also whether, based on the union's constitution, Kupau was in fact eligible to hold office. Under the Calhoon allocation of power, the first issue was properly one for the court, but the second issue, requiring a determination of substantive eligibility rights and an interpretation of the union's constitution, was within the discretion first of the union, then of the Secretary of Labor, and finally of the court, deferring to the two previous authorities.\textsuperscript{214}

The further difficulty faced by the Kupau court was that the potentially preemptive suit by the Secretary of Labor was in this case a reality, not a mere abstract proposition. The court was required to interpret section 403 so as not only to avoid precluding title I relief, but also to rationalize the dismissal of the Secretary's action. Focusing on the language of section 403, the court characterized the Secretary's suit as a challenge not to the union's election, but to the district court's injunction.\textsuperscript{215} In the court's view, Kupau's opponent, who was the title IV complainant to the Secretary, had already obtained from the union the exact relief he sought from the Secretary—the union's agreement to rerun the election, with Kupau no longer among the candidates.\textsuperscript{216} Therefore, the court concluded, the title IV complainant was not aggrieved by any union action, and there was no genuine dispute between him and the union that could serve as the basis for the Secretary's action.\textsuperscript{217} The Secretary's suit, according to the court, was nothing but an attempt to "subvert" the relief granted by the district court.\textsuperscript{218} The crucial determination of Kupau's eligibility fell to the district court, which, by ordering his installation, reached a result contrary to the findings of the union and the Secretary of Labor, both of whom the statute entitles to deference in matters of substantive eligibility rights.

\textsuperscript{214} See supra note 140 and accompanying text.
\textsuperscript{215} 622 F.2d at 458. The court did not explain whether it considered Kupau's suit a "challenge" to the election as contemplated by § 403. Insofar as Kupau sought an injunction directing the union to install him in office, his suit could be characterized as an implementation of the election rather than a challenge to it. The right to hold office as guaranteed by § 401(e) of the LMRDA, however, has been construed to include complaints alleging that a union has improperly refused to install a victorious candidate. See Marshall v. Railway Carmen, Local 875, 106 L.R.R.M. (BNA) 2673 (S.D. Miss. 1979), aff'd, 622 F.2d 1042 (5th Cir. 1980), cert. denied, 450 U.S. 980 (1981); Wirtz v. Teamsters, Local 73, 257 F. Supp. 784 (N.D. Ohio 1966). Suits "challenging" an election could thus be construed to reach not only the actual conduct of the balloting, but also the union's implementation of the election results. Construing "challenging" broadly would lessen the likelihood of collateral attacks on the overall election process that might undercut the finality of the Secretary of Labor's post-election suit.
\textsuperscript{216} 622 F.2d at 458.
\textsuperscript{217} Id.
\textsuperscript{218} Id.
In dismissing the Secretary's suit, the Ninth Circuit made complete its transition from an analysis based on institutional expertise, to an analysis based on public policy. The court's treatment of titles I and IV seemed more to underscore the tensions between them than to resolve them into a harmonious scheme. In characterizing the Secretary's suit as a challenge to the district court rather than to the union, the court turned the jurisdictional question into a race to the courthouse between the title I plaintiff and the Secretary of Labor. This was a race that the Secretary, because of the time-consuming exhaustion of remedies and investigation requirements of section 402,219 would invariably lose.

IV. Local 82 v. Crowley: Defining the Remedial Power of the Courts

In Kupau, the Ninth Circuit allowed the district court to supplant the Secretary of Labor as the arbiter of a dispute over candidate eligibility. In Local 82, Furniture Moving Drivers v. Crowley,220 judicial intervention encompassed the entire union nomination and election process. The plaintiff members had been excluded from a nominations meeting because of their failure to present computerized dues receipts. After some of them did produce the receipts and gain admission, they nominated one of themselves, Lynch, to run for secretary-treasurer against the incumbent, Griffiths, who was presiding over the nomination proceedings. The meeting was generally disorderly. At one point, Griffiths read aloud lists of members who were eligible and ineligible for candidacy. Lynch was among the eligible members, but four of the other plaintiffs were on the ineligible list. Further, even though the local contained 750 members, only twenty-seven names appeared on the two lists. Five of the plaintiffs were among those omitted from both lists. Questions concerning the lists ensued, and order was never fully restored. At the end of the meeting, Griffiths declared himself the sole nominee for secretary-treasurer and therefore proclaimed himself elected. He listed Lynch among the candidates for president.221

The plaintiffs filed suit under title I, alleging, among other things,222 that

219. LMRDA § 402(a), (b), 29 U.S.C. § 482(a), (b) (1982), requires the member to pursue internal remedies for three months. The member then has one month to file a complaint with the Secretary, and the Secretary has sixty days within which to conduct an investigation and file suit. If a full investigation requires more than 60 days, the Secretary sometimes seeks a waiver by the union of its defense of timeliness. See Donovan v. Operating Engineers, Local 369, 111 L.R.R.M. (BNA) 2742 (W.D. Tenn. 1982).
221. 679 F.2d at 982.
222. The plaintiffs also alleged (1) that the union's rule limiting candidacy to members who
the imposition of the dues-receipt requirement violated their section 101(a)(1) equal rights to nominate candidates and attend membership meetings, and their section 101(a)(2) right to express views freely at union meetings. They further alleged that the union's failure to recognize Lynch's nomination for secretary-treasurer violated section 101(a)(1). In the interim, the union had begun to conduct its balloting by mail. On the day before the union's established deadline for returning voted ballots, the United States District Court for the District of Massachusetts issued a temporary restraining order (TRO) to preserve the status quo and the court's jurisdiction. By the time the TRO was issued, most of the members had returned their voted ballots to the union. The TRO required that the ballots be sealed and deposited with the court until a final determination could be made on the plaintiffs' motion for a preliminary injunction. Seven months later, following hearings before the court and negotiations between the parties, the court issued a preliminary injunction voiding the election and ordering new nominations and balloting under the supervision of an independent balloting agency.

The district court found that since the plaintiffs had alleged disparate treatment, their claims under title I gave the court jurisdiction under section 102 regardless of whether the plaintiffs may also have had title IV claims. After finding that the dues-receipt requirement was inconsistent with the union's past practice, that the requirement had been waived for the incumbent officers attending the nominations meeting, and that Lynch was eligible and had been duly nominated for secretary-treasurer, the court concluded

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223. Crowley, 104 S. Ct. at 2560-61.
224. Id. at 2561.
225. Id. at 2560. Election of union officers by mail ballot is an acceptable practice under title IV. See 29 C.F.R. §§ 452.97, 452.102 (1984). See also U.S. DEP'T OF LABOR, LABOR-MANAGEMENT SERVICES ADMINISTRATION, ELECTING UNION OFFICERS 27-28 (1980).
226. 521 F. Supp. at 618.
227. 104 S. Ct. at 2561.
228. 521 F. Supp. at 618.
229. 104 S. Ct. at 2561. The injunction appears at 521 F. Supp. at 636-37. The independent balloting agency named in the injunction was chosen by the plaintiffs. The union did not avail itself of the opportunity to object to the plaintiffs' choice. Id. at 634. The court's satisfaction with this arrangement suggests the court's failure to consider that the mere use of an outside arbitrator offered no assurance that the election would conform to title IV. See supra note 139.
that an injunction should issue with respect to the section 101(a)(1) and (2) claims. In granting the injunctive relief, the court relied heavily on the public policy favoring the protection of individual rights of union members. Other than noting that the injunction was intended to interfere as little as possible with the union’s established procedures, the court did not discuss the propriety of the injunction in terms of the institutional values set forth in *Calhoon*. The United States Court of Appeals for the First Circuit affirmed, despite the intervention of the Secretary of Labor in opposition to the injunction. The First Circuit framed the issue as whether, in view of the fact that the election had progressed as far as it had, title IV preempted title I, as least insofar as the district court had ordered a new election. Thus, in framing the issue, the court implicitly recognized two factors as crucial to the determination of the case—the comprehensive nature of the district court’s remedy, and the timing of the district court’s intervention. However, the First Circuit discussed these factors solely within the context of section 403, where both of them were crucial in determining whether title IV preclusion exists, without even mentioning that the nature of the remedy could also be dispositive of a member’s suit under section 102 insofar as that section contemplated actions for “appropriate” relief.

To determine whether the plaintiffs had stated a valid title I claim, the court first examined *Calhoon* and noted the need to allege disparate treatment and not merely unequal effects of a uniformly applied union rule. Next, the court examined several LMRDA decisions by the Supreme Court, finding in two of them—*Trbovich v. United Mine Workers* and *Dunlop v.*

231. *Id.* at 624-27.
232. *Id.* at 628. The public interest was one of four factors the court considered to determine whether the injunction should issue. The court also found (1) that the plaintiffs had shown a substantial likelihood of prevailing on the merits; (2) that if preliminary relief were denied, the plaintiffs would suffer irreparable injury by having to remain in a local whose officers’ elections had been tainted by likely violations of title I; and (3) that the harm plaintiffs would likely suffer if relief were denied outweighed the burden imposed on the union by the injunction. *Id.* at 627-28.
233. *Id.* at 634.
234. Instead, the court relied on the *Kupau* court’s assertion that if a member states a title I claim, the court has jurisdiction regardless of the presence of title IV claims. *Id.* at 623 (citing *Kupau*, 622 F.2d at 455). See supra note 211 and accompanying text.
235. 679 F.2d 978, 984 (1st Cir. 1982).
236. *Id.* at 985.
237. *Id.* at 985-86.
238. *Id.* at 985-86.
239. 404 U.S. 528 (1972). In *Trbovich*, the Court held that title IV did not bar intervention by a union member in an action brought by the Secretary of Labor. The Court thus recognized the strength of individual interests under title IV. See Comment, *Judicial Review of Adminis-
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Bachowski—a policy of greater solicitude for the rights of aggrieved union members that undermined "Calhoon’s policy of noninterference." Finally, the court reviewed in some detail the legislative history surrounding the enactment of the LMRDA bill of rights and concluded that the legislative goals of title IV did not preempt title I in the instant case. The court thus followed the same sequence of analysis as the courts had in Schonfeld and Kupau—first relying on Calhoon to determine whether a title I cause of action existed, and then invoking the overall public policy goals of the Act to support the need for the court to grant relief under title I.

After concluding that the plaintiffs' claims were genuine title I claims and not merely title IV claims with a title I label, the Crowley court identified

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240. 421 U.S. 560 (1975). In Bachowski, the Court ruled that the Secretary's decision not to sue in response to a member's title IV complaint was subject to judicial review under the Administrative Procedure Act. As in Trbovich, the Court recognized that the Secretary's views were not sacrosanct, and that both private and public interests were at stake. See Comment, Judicial Review, supra note 239, at 827. However, the Bachowski Court also held that the reviewing court could not conduct a "trial-type inquiry into the factual bases of the Secretary's conclusion," but rather was limited to determining whether the Secretary's rationale for declining to file suit "evince[d] that the Secretary's decision [was] so irrational as to constitute the decision arbitrary and capricious." 421 U.S. at 566, 572-73. Bachowski notwithstanding, the Secretary seems to have lost little by becoming subject to this deferential standard of review. See, e.g., Torres v. Donovan, 111 L.R.R.M. (BNA) 3140 (C.D. Cal. 1982); Balanoff v. Donovan, 111 L.R.R.M. (BNA) 2592 (N.D. Ill. 1982); Fay v. Marshall, 106 L.R.R.M. (BNA) 2047 (D. Nev. 1980); Bath v. Marshall, 105 L.R.R.M. (BNA) 2866 (D. Colo. 1980); and other cases summarized in U.S. DEP'T OF LABOR, ELECTIONS DIGEST (Supp. I 1983), supra note 13, § 930.2100, at 753-56, all of which were ultimately decided in the Secretary's favor. From the perspective of protecting the individual rights of union members, the monotony of the result seems to have lost little by becoming subject to this deferential standard of review. See Comment, Judicial Review, supra note 239, at 839. From the perspective of the allocation of enforcement power, however, Bachowski merely confirmed what Calhoon had already stated about deferring to the Secretary's expertise in substantive election matters. See supra notes 136-40 and accompanying text.

241. 679 F.2d at 986.

242. Id. at 987-90.

243. See supra notes 178-83 and accompanying text for a discussion of Schonfeld; supra notes 203-13 and accompanying text for a discussion of Kupau.

244. 679 F.2d at 990-91. The court's attitude was reminiscent of the Schonfeld court's fear that complaining members might attempt to convert title IV claims into title I claims merely by appending a free speech claim. See supra note 182 and accompanying text.
the remaining impediment to title I jurisdiction as being the possibility that the election was "already conducted" within the meaning of section 403 of the Act.\footnote{679 F.2d at 991.} Conceding that the legislative history on this point was unclear, that the cases were not in accord, and that the phrase itself was not free from ambiguity, the court declared that "already conducted" meant "previously carried out."\footnote{Id. at 991-92.} The court reasoned that since the ballots here remained uncounted, the election was not "previously carried out," and section 403 did not preclude jurisdiction.\footnote{Id. at 992-93.} The court identified three policies in support of its interpretation of section 403, but none of them involved \textit{Calhoon}'s delineation of institutional power.\footnote{According to the court, the policies enhanced by § 403 preclusion were (1) the "need for effective relief"; (2) the benefits of "preresult judicial relief"; and (3) the need to discourage members from "sandbagging" by waiting to see whether they had won or lost the election before filing suit. \textit{Id.} at 993. The court took no notice, however, of the fact that if the "sandbagging" members won the election and had been precluded from filing a preelection suit, no court or union resources would have been expended for litigation. The court's argument was justifiable, however, on the facts of \textit{Crowley} because the alleged violation—the failure to list an eligible and duly nominated candidate on the ballot—clearly affected the outcome of the election. Still, the court's argument cannot rise to the level of a generally applicable principle, because in many cases, such as those alleging the denial of a member's right to vote, the effect on the election's outcome cannot be assessed until after the election is completed. Complaining members would not be "sandbagging." Rather, they would be acting in conformance with the statute, which delays the decision on remedial action until the violation's practical effect on the outcome is determinable.} The court did state, however, that it was cognizant that preclusion by title IV would enable the court to utilize the Secretary of Labor's expertise.\footnote{Id. at 993-94.} Yet, it also noted that Congress' desire for full enforcement of title I, as revealed in the legislative history, overrode the need for the Secretary's expertise and any other arguments set forth in favor of title IV.\footnote{Id. at 1004 (Campbell, J., dissenting).}

The dissent, written by Judge Campbell, maintained that Congress had established a special mechanism for conducting remedial elections, which the Secretary of Labor was to administer under court supervision.\footnote{Id. at 994.} Moreover, he cautioned against court-supervised elections that utilized procedures other than those authorized by the union's own rules.\footnote{Id. at 1005.} He thus adhered to the scheme of institutional priorities outlined in \textit{Calhoon}, under which responsibility for resolving election disputes fell first to the union, then to the Secretary of Labor, and only then to the courts.\footnote{See supra note 140 and accompanying text.}
By reviving the judicial values set forth in *Calhoon*, Judge Campbell laid the foundation for the Supreme Court’s ruling on this case. The Court reversed the judgment of the Ninth Circuit and remanded the action for a counting of the impounded ballots.254 Focusing on the question of title I jurisdiction, the Court noted that section 102, by itself, seemed to suggest that a member could properly maintain a title I suit whenever rights guaranteed by that title had been violated.255 The Court noted, however, that section 102 limited the relief available to that which was “appropriate” in a given situation256—a factor not expressly discussed in *Calhoon*. Then, as the *Calhoon* Court had done, the *Crowley* Court analyzed the statutory provision at issue within the broader context of the LMRDA enforcement and remedial scheme and concluded that the Act’s exclusive method for protecting title IV rights reflected Congress’ desire not to permit individuals to block or delay union elections by filing private suits.257

The Court identified the crucial issue as whether title I remedies were available to union members while an election was “being conducted.”258 Construing the language of section 403, the Court found that full title I rights would be available to members “prior to the conduct” of an election, and that after the election had been completed, section 403 plainly barred title I relief to members challenging the validity of the election.259 Neither the statute itself nor the legislative history, however, provided a direct indication of how section 403 should apply to title I suits during an ongoing election.260 Despite this deficiency, the legislative history did provide a clear indication of Congress’ intention to consolidate election challenges in the Secretary of Labor and to have him supervise remedial elections necessitated by application of the Act.261 The Court inferred from this policy a strong suggestion that Congress would not have considered a court order requiring judicial supervision of a remedial election to be “appropriate” relief under section 102, even if the plaintiffs properly alleged and proved violations of title I.262 Therefore, the *Crowley* Court concluded, whether a title I action could be maintained during the course of an election depended upon the

255. Id. at 2564.
256. Id.
257. Id. at 2565-67. The Court observed that it would not “be appropriate to interpret the enforcement and remedial provisions of title I in isolation.” Id. at 2565.
258. Id. at 2566.
259. Id.
260. Id. at 2566-67.
261. Id. at 2567-68. See supra notes 84, 105 and accompanying text.
262. Id. at 2567.
nature of the relief being sought. If a plaintiff sought the invalidation of an election already being conducted, and court supervision of a new election, the plaintiff was required to utilize the title IV remedy. If the plaintiff sought "less intrusive remedies," however, the district court retained the authority to order appropriate relief under title I. As the Court implied, this conclusion was a logical extension of *Calhoon* and the policies the Court had previously identified as underlying the enforcement scheme of the Act. *Calhoon*, the *Crowley* Court explained, declined to allow the district court to assert jurisdiction under title I to hear title IV claims, just as congressional policy had deferred to the unions and the Secretary of Labor. Moreover, the Court had reiterated this policy in subsequent decisions, including *Trbovich v. United Mine Workers*, which the First Circuit had cited to support the contrary argument that *Calhoon* had been undercut by a policy of greater solicitude for the rights of aggrieved union members. The use of *Trbovich* to support opposite positions reflects the difference between the Supreme Court's and the First Circuit's concept of "policy." The First Circuit used "policy" to refer to the social values embodied in the substantive provisions of the statute. Hence, *Trbovich* could be said to evince a policy in favor of protecting union members' rights because the Court permitted a title IV complaining member to intervene in a section 402 suit brought by the Secretary of Labor. But when the Supreme Court discussed policy in *Calhoon* and *Crowley*, it addressed questions concerning how the courts and the Secretary of Labor should proceed to protect the rights conferred, rather than questions of whose rights are favored—a judgment that had been made by Congress. *Trbovich* again was appropriate, because although the Court there permitted intervention by a union member in a title IV action, the intervenor was limited to raising only those issues raised in the Secretary of Labor's complaint. *Trbovich* thus preserved the values established in *Calhoon*, because it disallowed the member unrestricted access to the court in a title IV matter, requiring him instead to limit his intervention to the issues defined by the Secretary of Labor's expertise.

Throughout its treatment of the jurisdiction question, therefore, the Supreme Court has been concerned with policy in the judicial, rather than the legislative or political, sense. By failing to follow the *judicial* policy

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263. Id.
264. Id. at 2571.
265. Id. at 2570-71.
266. Id. at 2569-70. See *supra* notes 135-40 and accompanying text.
267. See *supra* note 239 and accompanying text.
268. See *supra* note 248 and accompanying text.
269. See *supra* note 239.
enunciated in *Calhoon*, the *Schonfeld* and *Kupau* courts, and the lower courts in *Crowley*, went astray.\(^{270}\) The *Crowley* Court’s nod in the direction of public policy can be seen in the Court’s statements inviting the use of title I in certain election-related circumstances.\(^{271}\) The Court specifically left open the possibility of title I relief in actions seeking “less intrusive remedies” that could be implemented without “substantially delaying or invalidating an ongoing election.”\(^{272}\) How these phrases are to be interpreted the Court did not say, and the full preemptive effect of section 403 thus remains uncertain.\(^{273}\) But the Court did make it clear that in determining whether preemption has occurred, the courts should look not only to the nature of the rights being asserted, but also to the appropriateness of the remedy being sought.

V. CONCLUSION

The Supreme Court’s decision in *Crowley* complements its decision twenty years earlier in *Calhoon*. *Crowley* reaffirms the Court’s commitment to the values of minimal judicial intervention in internal union affairs and deference to valid union rules and the specialized knowledge of the Secretary of Labor. Although the immediate result of *Crowley* was to dismiss a suit by union members whose title I rights the Court agreed had been violated, the intended effect of the decision was not to diminish those rights, but rather to insure that their vindication would take place in the forum most capable of providing an accurate and adequate remedy.\(^{274}\) In addition, *Crowley* also

\(^{270}\) See supra notes 187-90 and accompanying text for a discussion of *Schonfeld*; supra notes 192-219 and accompanying text for a discussion of *Kupau*; supra notes 230-33, 248-50 and accompanying text for a discussion of *Crowley*.

\(^{271}\) See, e.g., the Court’s statement that § 403 does not foreclose the availability of all post-election relief, 104 S. Ct. at 2566 n.16; and the Court’s concern that overly broad preemption of title I by title IV might prevent members from ever obtaining relief for violations of the Act, *id.* at 2569. See supra note 68.

\(^{272}\) 104 S. Ct. at 2557, 2568-69.

\(^{273}\) The scope of “ongoing election” is of particular importance when intermediate or national labor organizations elect their officers by a vote among convention delegates. In such cases, the elections of the convention delegates must be conducted in accordance with title IV. See 29 C.F.R. §§ 452.22, 452.27, 452.119-.133 (1984). The election of parent organization officers can be said to be “ongoing” when the election of delegates occurs. The time interval between the election of delegates and the election of parent organization officers varies from union to union, and it is not clear from *Crowley* where the point of § 403 preemption would fall. For an early instance of the application of *Crowley* to an election of delegates, see Bishop v. DuVal, 116 L.R.R.M. (BNA) 3273 (S.D.N.Y. 1984), where the court held that a title I challenge to a May 1984 election of delegates who would vote for national officers at an August 1984 convention involved an ongoing election of national officers, and that ordering new delegate elections in July 1984 would substantially delay such an ongoing election. The court, therefore, dismissed the complaint on jurisdictional grounds. *Id.* at 3274.

\(^{274}\) Thus, the Court assured the plaintiffs that they would still have access to the remedies
complements *Calhoon* by filling a void in the earlier Court's interpretation of section 102 of the LMRDA. *Crowley* furnishes a definitive interpretation of both the jurisdictional function and the substantive meaning of that section's provision for "appropriate" relief.

*Crowley* is not without its limitations, chief among them the fact that the jurisdictional test it announces is dispositive only if the title I plaintiff seeks the remedy of voiding and rerunning an election of union officers under the court's supervision.\(^{275}\) *Crowley* preserves, however, *Calhoon*'s practice of stating the broader judicial values that can guide the courts in resolving jurisdictional issues even if the facts are distinguishable. Recognizing that there is ultimately no bright line between titles I and IV, the Court has nonetheless made it clear that the more a remedy disrupts the election process or requires judgments in the specialized area of internal union affairs, the more likely that section 403 will preempt the title I jurisdiction of a court.

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\(^{275}\) See *supra* notes 272, 273 and accompanying text.

* The author is an employee of the U.S. Department of Labor. The views expressed in this Note are those of the author and do not necessarily reflect the position of the Department of Labor or any other federal agency.