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Restrictions on Outsider Participation in Union Politics

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RESTRICTIONS ON "OUTSIDER" PARTICIPATION IN UNION POLITICS

At its nineteenth constitutional convention in September, 1978, the United Steelworkers of America[1] adopted an amendment[2] which added a unique provision to the union's constitution. This amendment prohibits any candidate for the union's top offices from soliciting or accepting any financial or other support from anyone who is not a member of the USWA and provides that any candidate who "willfully and substantially" violates this new rule can be disqualified from seeking office.[3] In focus and scope, the candidacy restriction created by section 27 is unprecedented among American labor organizations.

This note will analyze the candidacy restriction imposed by section 27 of the USWA constitution to determine whether it comports with the applicable provisions of the Labor-Management Reporting and Disclosure Act of 1959,[4] the primary instrument of national labor policy in the area of union elections.[5] The note will begin by sketching the "legislative history" of section 27. The significant provisions of section 27 will then be set out. Next, the note will examine the nature and extent of a union candidate's rights under the LMRDA and the statutory mechanism for vindicating those rights. Finally, both the judicial and United States Department of Labor interpretations of the "reasonable qualifications" which Title IV of the LMRDA permits unions to place upon potential candidates for union office will be analyzed. It will be shown that section 27 places unreasonable qualifications upon candidacy and thus violates Title IV of the LMRDA.

1. Hereinafter referred to in the text and footnotes as the USWA.

2. USWA CONST., art. V, § 27 (1978) [hereinafter referred to in the text and footnotes as section 27]. *See* note 27 *infra* for the text of section 27.

3. USWA CONST., art. V, § 27(d).

4. 29 U.S.C. §§ 153, 158-60, 187, 401-531 (1976) [hereinafter referred to in the text and footnotes as the LMRDA]. The LMRDA is referred to popularly as the Landrum-Griffin Act.

5. In Trbovich v. United Mine Workers of America, 404 U.S. 528 (1972), the United States Supreme Court explained:

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

Id. at 530.

THE HISTORY OF SECTION 27

The genesis of the section 27 candidacy restriction can be seen in the stormy recent history of the USWA. On February 8, 1977, the 1.4 million member union held an election to select a successor to its retiring president, I.W. Abel. The opponents in an extremely bitter campaign were Lloyd McBride, the self-proclaimed "administration candidate,"[6] and dissident Edward Sadlowski, director of USWA District 31.[7] Sadlowski's path to the directorship had been a difficult one. After initially losing the District 31 election in 1973, Sadlowski charged that the contest had been tainted by election fraud. An investigation of the allegations by the United States Department of Labor disclosed enough irregularities that the USWA agreed to rerun the election.[8] Sadlowski won the rerun by a large margin.[9]

The 1977 USWA presidential campaign proved to be a renewal of the conflict between the union "establishment" and Sadlowski's "rank and file" party. A major campaign issue concerned the source of some of Sadlowski's financial support. In his fund solicitations, Sadlowski had utilized mailing lists donated by various liberal organizations.[10] This prompted outgoing USWA President Abel to charge that "limousine liberals" and employers were contributing to Sadlowski and "using their dollars to take the union away from the control of its members."[11] Eventually, McBride filed an action in the Circuit Court of Cook County, Illinois,[12] charging Sadlowski with accepting contributions

6. Wall St. J., Feb. 22, 1977, at 7, col. 1.

7. The McBride-Sadlowski contest was viewed as "a test of radically different philosophies: traditionalist Mr. McBride, 62, versus a young dissident, Edward Sadlowski, . . . who pledged to take the union in 'new directions'." INDUSTRY WEEK, Oct. 2, 1978, at 19. Sadlowski described himself as "a socialist in the tradition of Eugene V. Debs." THE PROGRESSIVE, April, 1977, at 26.

The International Union is divided into 25 geographical districts, each headed by a district director. District 31 is the largest district and includes the steelworkers in the Calumet region of Illinois and Indiana. USWA CONST., art. X, § 1 (1978).

8. A detailed recital of the facts surrounding the 1973 District 31 election is found in Brennan v. USWA, 554 F.2d 586 (3d Cir. 1977). The election was rerun pursuant to a settlement agreement between the Secretary of Labor and the USWA, in an action brought by the Secretary to void the election. *Id.* at 590-91.

9. Whereas Sadlowski had lost the February, 1973 election by 1,788 votes, he won the second election by a margin of nearly 20,000 votes. Wall St. J., Nov. 19, 1974, at 21, col. 3.

10. Such lists reportedly included the names of members of the American Civil Liberties Union, donors to the political campaigns of Ramsey Clark and Fred Harris, and members of various environmental groups. *Id.* Jan. 13, 1977, at 14, col. 4.

11. *Id.* AFL-CIO President George Meany revealed that three of the major "limousine liberals" were Harvard economist John Kenneth Galbraith, Washington attorney Joseph L. Rauh, Jr. (who represented Sadlowski) and former United Autoworkers official Victor Reuther. *Id.* Jan. 11, 1977, at 18 col. 2. The three had co-signed invitations to Sadlowski fund-raisers for a struggle between "progressive" politics and "continued conservative domination of the union." *Id.*

12. McBride v. Sadlowski, No. 76 CH-7669 (Cir. Ct. Cook Co., dismissed with prejudice Mar. 29, 1977).

from employers, in violation of both the union's constitution[13] and the LMRDA.[14] During the discovery process, the trial judge ordered both parties to disclose their campaign finances.[15] Sadlowski released to the press a list of his contributors,[16] claiming that eighty-five cents of every dollar collected had come from union members.[17] McBride, in turn, charged that more than half of Sadlowski's money had been contributed by nonmembers.[18] In an election supervised by the United States Department of Labor,[19] McBride defeated Sadlowski by a vote of 328,861 to 249,281.[20]

Following the election, the source of Sadlowski's campaign financing remained an item of concern for the union's leadership. This concern was underscored in April, 1978 when the USWA sued nine tax-exempt foundations for allegedly channeling employer monies into Sadlowski's campaign[21] in violation of section 401(g) of the LMRDA.[22]

13. USWA CONST., art. V, § 4 (1976).

14. 29 U.S.C. § 481(g) (1976) provides:

> No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in any election subject to the provisions of this subchapter.

15. Wall St. J., Jan. 7, 1977, at 4, col. 5.

16. As of January, 1977, Sadlowski reported that he had received $150,000—one-third from raffles, bingo and other rank-and-file events, and two-thirds from dinners and direct-mail appeals. The total was said to include $26,000 (17% of the total) in non-steelworker contributions of $500 or more. Volunteered services were valued at another $400,000, computed at the average steelworker hourly wage rate. Typical of the reported nonmember donations exceeding $1,000 was $1,200 from Marion Edey, an officer of the League of Conservation Voters. Ms. Edey explained that Sadlowski would have a "broader public interest" than the current USWA leadership. *Id.* Jan. 10, 1977, at 8, col. 5.

17. *Id.* Jan. 21, 1977, at 10, col. 5.

18. *Id.* Since Sadlowski's published list of contributors did not indicate the contributors' occupations, the McBride campaign staff used a computer to compare the zip codes of contributors with those on the USWA membership list. They announced that more than half of Sadlowski's contributions originated in such non-steelworker neighborhoods as Boston and Cambridge, Massachusetts; Manhattan, New York; Beverly Hills and Berkeley, California; and Evanston, Illinois. *Id.* McBride contended that only 5.6% of Sadlowski's money came from union members. *Id.* Jan. 24, 1977, at 12, col. 2.

19. Assistance provided by the United States Department of Labor included: (1) a Technical Assistance Task Force; (2) teams of compliance officers in each district; (3) election-day assistance; and (4) assistance in tabulating the votes on the district level. *Id.* Jan. 4, 1977, at 6, col. 3. Terming this "the most supervised election in our union's history," President McBride later joked that "if any more government people had been involved in our election, the government would have had to build another federal building in downtown Pittsburgh." Proceedings of the 19th Constitutional Convention of the USWA, at 6 (1978) [hereinafter cited in text and footnotes as USWA Proceedings].

20. Wall St. J., April 25, 1977, at 12, col. 3.

21. McBride v. Rockefeller Family Fund, No. 78. Civ. 1762 (S.D.N.Y., dismissed April 9, 1979).

22. 29 U.S.C. § 481(g) (1976). The Union charged that eight foundations, including the Rockefeller Family Fund and the Field Foundation, donated money to the Association for Union Democracy, which in turn used the money to recruit and train Sadlowski poll-watchers, publish an election manual for Sadlowski supporters, and provide him with free legal assistance and ad-

Addressing the USWA convention on September 18, 1978, McBride renewed the assault on "outsiders or interlopers from the campuses or Hollywood or the foundations . . . which felt called upon to try to influence the election. . . ."[23] He urged that the officers of the USWA should be responsible only to the members.[24] The USWA administration proposed section 27 as a solution to the "outsider" problem.[25] It was adopted overwhelmingly by the convention delegates.[26]

SECTION 27 OF THE USWA CONSTITUTION

In general, section 27,[27] the "outsider" amendment adopted at the 1978 USWA convention, prohibits any candidate or prospective candidate for the major offices[28] of the International Union from soliciting

ministrative aid. Sadlowski's attorney, Joseph Rauh, termed the USWA suit "a transparent effort to intimidate public-interest foundations from continuing to assist union reform groups in seeking fair elections." Wall St. J., April 20, 1978, at 11, col. 2.

23. USWA Proceedings, *supra* note 19, at 6.

24. Gary Post-Tribune, Sept. 18, 1978, at A8, col. 4.

25. The problem of outsider interference in USWA elections had also been the subject of 225 resolutions submitted by various locals. Report of the Constitution Committee, USWA Proceedings, *supra* note 19, at 237.

26. In a standing vote, approximately 150 of several thousand delegates voted against section 27. Hammond Times, Sept. 19, 1978, at 1, col. 3.

27. Section 27, in pertinent part, provides:

> No candidate (including a prospective candidate) . . . and supporter of a candidate may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any non-member . . . .
>
> The International Executive Board shall adopt regulations . . . to implement this provision . . . .
>
> There is hereby created a Campaign Contribution Administrative Committee to administer and enforce this Section. This Committee shall consist of three persons, appointed by the International Executive Board, . . . who shall be distinguished, impartial citizens who are not members of the International Union . . . . The Committee shall have the following powers:
>
> (a) . . . to contact any and all non-members who it feels may be providing, or attempting to provide, prohibited support . . . and attempt by persuasion to convince such non-members to refrain from providing such support.
>
> (b) . . . (i) to direct any candidate, or any supporter, to cease and desist from any course of conduct which the Committee believes breaches this Section . . . and (ii) to direct any candidate, supporter or non-member to take such corrective action as the Committee deems appropriate to cure the effects of any violation . . . .
>
> (c) . . . receive and promptly review the information candidates and their supporters are required to file . . . .
>
> (d) *In the event that a candidate, or a supporter of a candidate with that candidate's knowledge or acquiescence, willfully and substantially breaches the obligations prescribed in this Section, or the regulations adopted by the . . . Board . . . , the Committee shall,* upon notice and hearing under such expedited conditions as the Committee deems appropriate in the circumstances, *have the power to declare such candidate disqualified* . . . .
>
> With respect to the administration of this Section 27, decisions of the Committee shall be final and binding, and not subject to review by any tribunal within the Union.

Id. (emphasis added).

28. Those offices are president, secretary, treasurer, vice-president (administration), vice-president (human affairs), national director of Canada, and district director. USWA CONST., art. IV, § 1 (1976). These officers together constitute the International Executive Board. *Id.* art. IV, § 18.

or accepting financial or other support from non-USWA members.[29] The only exception to this blanket prohibition allows an individual to donate his or her own personal time.[30]

Section 27 authorizes the creation of a Campaign Contribution Administrative Committee[31] composed of three nonmembers to enforce the rule.[32] This committee is empowered to direct a candidate or supporter to cease any conduct believed to be a violation of section 27.[33] It is also authorized to dissuade any nonmembers from providing prohibited support.[34] If any candidate willfully breaches section 27, the Committee has the power to disqualify that candidate.[35] Any member who violates section 27 is deemed to have also committed an offense under article XII of the union's constitution.[36] Such offenses are punishable by fine, suspension or expulsion from the union.[37]

The Regulations

Pursuant to the authority vested in it by section 27, the Union's International Executive Board[38] promulgated eleven pages of regulations[39] in an attempt to close any loopholes that might have been left by section 27. To accomplish this goal, the regulations declare, in sweeping language, that nonmember "assistance of *any kind* related to candidacy" is prohibited.[40] In addition to this broad declaration against nonmember support, the regulations expressly outlaw a variety of outside candidacy contributions. For example, the regulations forbid "outsider" compensation of another nonmember who is volunteering professional services.[41] "Outsiders" are also prohibited from providing a candidate with office space, mailing lists or anything else of value without charging him the normal commercial price.[42] Nonmem-

29. *Id.* art. V, § 27. The term "non-member," as used in section 27, includes any corporation, foundation or other entity which receives at least part of its funds from nonmembers. *Id.*
30. *Id.*
31. Hereinafter referred to in the text and footnotes as the Committee.
32. USWA CONST., art. V, § 27 (1978).
33. *Id.* § 27(b).
34. *Id.* § 27(a).
35. *Id.* § 27(d).
36. USWA CONST., art. XII, § 1(a) (1978) provides:
Any member may be penalized for committing . . . [a] violation of any of the provisions of this Constitution.
37. *Id.* art. XII, § 2.
38. For a list of the officers making up the International Executive Board, *see* note 28 *supra*.
39. Article V, Section 27, Regulations, § I [hereinafter referred to in the text and footnotes as the Regulations].
40. *Id.* § I-B (emphasis added).
41. *Id.* § I-B-1.
42. *Id.* § I-B-2-b. Apparently, these provisions would mean that a lawyer who volunteered

ber support given to a member before he becomes a candidate, including nonmember support donated prior to the union's adoption of section 27, is likewise prohibited.[43]

Finally, with regard to cash contributions, the regulations expressly require the contributor of more than five dollars in cash to sign a list of contributors and demonstrate his membership in the union.[44] Also in this regard, the regulations require each candidate to make periodic reports to the Committee, disclosing, among other items of information, all contributions by check, all cash contributions exceeding five dollars, the identities of all contributors, and a list of the time and place of each campaign rally or fund-raising event at which cash was collected.[45] The Committee must make the information contained in these candidates' reports available to all announced candidates.[46] However, the release of the identities of cash contributors of less than twenty-five dollars is discretionary with the Committee.[47]

In summary, the USWA, by adopting section 27 and the regulations promulgated thereunder, has forbidden any candidate or prospective candidate for its national offices from accepting virtually any support from anyone who is not a USWA member. To ensure compliance, any candidate must report to the Committee the identities of all persons contributing checks or more than five dollars in cash, and the Committee can reveal those identities to the other candidates. Any candidate who willfully violates section 27 may be disqualified from being a candidate.

CANDIDACY RESTRICTIONS UNDER THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

The LMRDA Mandate of Union Democracy

Between 1957 and 1960, the Senate Select Committee on Improper Activites in the Labor-Management Field[48] conducted an investigation

his help to a USWA candidate could not use his own secretary or office space in the process. *See* Wall St. J., Sept. 22, 1978, at 32, col. 2.

43. Regulations, *supra* note 39, at § I-A. If a nonmember attempts to support a candidate, that candidate has an affirmative obligation to contact the nonmember, reject the support, and "take whatever action is necessary to avoid such support having an effect upon the election." *Id.* § I-C.

44. *Id.* The same signature and reporting requirement applies to anyone purchasing a raffle ticket that is intended to raise funds for a candidate. *Id.* § I-D-4.

45. *Id.* § III-A.

46. *Id.*

47. *Id.* § III-A.

48. The Committee was chaired by Senator John L. McClellan (D. Ark.). It was popularly known as the McClellan Committee.

and held hearings which revealed a number of abuses in the field of labor-management relations.[49] Pressure for remedial legislation culminated in the passage of the Labor-Management Reporting and Disclosure Act of 1959.[50]

In addressing itself to internal union affairs, Congress was faced with two divergent philosophies concerning the nature and function of labor organizations. One regards the union as a military organization, locked in economic warfare with management and unable to tolerate any dissension within its ranks.[51] According to many adherents of this view, a labor organization has "the same justification for restricting opposition that may threaten its very existence as does a government, or more particularly, an army, during time of war."[52] The other regards labor-management relations in terms of industrial democracy. Advocates of this viewpoint consider the workers to be entitled to participate in the government of their industrial life in much the same manner as all citizens participate in political government through representative democracy.[53]

49. "For months the committee paraded across the public stage a series of sordid spectacles of union corruption and oppression." Summers, *American Legislation for Union Democracy*, 25 MOD. L. REV. 273 (1962) [hereinafter cited as Summers]. The McClellan Committee held 270 days of public hearings and amassed 46,150 pages of record, examining 1,526 witnesses and issuing 8,000 subpoenas. Three hundred forty-three witnesses declined to answer Committee inquiries by invoking the fifth amendment privilege against self-incrimination. J. MCCLELLAN, CRIME WITHOUT PUNISHMENT 208 (1962).

50. 29 U.S.C. §§ 153, 158-60, 187, 401-531 (1976). "The . . . bill is primarily designed to correct abuses which have crept in to labor and management and which have been the subject of investigation by the McClellan Committee." S. REP. NO. 187, 86th Cong., 1st Sess. 1 (1959), *reprinted in* [1959] U.S. CODE CONG. & AD. NEWS 2318 [hereinafter referred to as Senate Report 187].

51. A particularly bellicose protrayal of unionism emphasized that "[t]he union is a fighting instrument and exhibits always more or less definitely a tendency to take on the characteristics of armed forces and warfare in its structure and activities. There are generals, spies, military secrets, battles, armistices, treaties, breaches of diplomatic relations with the enemy. and so on." Muste, *Army and Town Meeting*, in UNIONS, MANAGEMENT AND THE PUBLIC 136 (2d ed. E. Bakke, C. Kerr & C. Anrod 1960).

52. J. GRODIN, UNION GOVERNMENT AND THE LAW: BRITISH AND AMERICAN EXPERIENCE 173 (1961).

53. Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 MICH. L. REV. 819, 830 (1960) [hereinafter referred to as Cox].

According to the "industrial-democratic" view of labor-management relations, the labor union enjoys a privileged position since our democratic society has entrusted it with the power to bind workers in their terms and conditions of employment. According to this rationale, the public can require that this power be democratically exercised. Summers, *The Usefulness of Law in Achieving Union Democracy*, in UNIONS, MANAGEMENT AND THE PUBLIC 582 (2d ed. E. Bakke, C. Kerr & C. Anrod 1960). For the same reason, some writers have referred to the labor union as a quasi-public institution. Aaron & Komaroff, *Statutory Regulation of Internal Union Affairs—I*, ILL. L. REV. 425 (1949).

Noted labor authority Archibald Cox has argued that the "idealistic aspirations which justify labor organizations" in the first place can be achieved only by a democratic union. Cox, *supra* note 53, at 830. This view was amplified by Professor Clyde Summers in these terms:

In enacting the LMRDA, Congress chose for American labor the democratic model of labor-management relations rather than the military one. Thus, the Act is built upon the basic premise that control of the union belongs to its members.[54] Although the Act embodies a congressional judgment that union democracy is in the national interest,[55] Congress did not lose sight of the unions' legitimate need for a large measure of self-determination. Indeed, special care was taken not to undermine union self-government or to weaken unions vis-à-vis management in their role as collective bargaining agents.[56] It is reasonable to conclude therefore, that, in enacting the LMRDA, Congress adopted a policy of limited intervention in internal union affairs.[57]

The Union Candidate's Rights Under the LMRDA

The LMRDA contains seven titles dealing with various facets of internal union affairs and labor-management relations.[58] With regard to elections, Title I provides that every member shall have equal rights and privileges to nominate candidates and to vote "subject to reasonable rules and regulations in such organization's constitution and by-

> Collective bargaining can serve this purpose of industrial democracy only if the union is democratic; the worker gains no voice in the decisions of his industrial life if he has no voice in the decisions of the union which speaks for him. Legislative proposals for protecting union democracy responded to the felt need to fulfil the ultimate goals of unionisation and collective bargaining.

Summers, *supra* note 49, at 275.

54. Summers, *supra* note 49, at 290.

National Labor Relations Board Member Howard Jenkins has noted that the underlying theory of the LMRDA "appears to be that given federally enforceable guarantees of frequent periodic elections under fair conditions with full opportunity to participate in the nomination and election processes, an alert membership can assure leadership integrity." Jenkins, *Trade Union Elections*, in REGULATING UNION GOVERNMENT 155 (M. Estey, P. Taft & M. Wagner eds. 1964).

55. The Senate Report on the bill which became the LMRDA explained that a substantial public interest was bound up in labor's internal problems since federal labor laws enable the unions to determine the economic welfare of their members. To protect the members' vital interest in the policies and conduct of union affairs "what is required is the opportunity to influence policy and leadership by free and periodic elections." Senate Report 187, *supra* note 50, at 6.

56. The Senate Committee issuing Report 187 recognized "the desirability of minimum interference by Government in the internal affairs of any private organization." *Id.* at 7.

57. Summers, *supra* note 49, at 279.

58. Title I, LMRDA §§ 101-05, 29 U.S.C. §§ 411-15 (1976), is a "Bill of Rights" for members of labor organizations. Title II, LMRDA §§ 201-11, 29 U.S.C. §§ 431-41 (1976), establishes reporting and disclosure requirements for unions, union officers, employers and employer consultants. Title III, LMRDA §§ 301-06, 29 U.S.C. §§ 461-66 (1976), regulates the use by parent organizations of trusteeships over local unions. Title IV, LMRDA §§ 401-04, 29 U.S.C. §§ 481-84 (1976), regulates union election procedures. Title V, LMRDA §§ 501-05, 29 U.S.C. §§ 501-05 (1976), regulates the fiduciary responsibilities of union officers. Title VI, LMRDA §§ 601-11, 29 U.S.C. §§ 521-31 (1976), contains miscellaneous provisions regarding the enforcement of the LMRDA. Title VII, LMRDA §§ 701-07, 73 Stat. 519 (codified in scattered sections of 29 U.S.C.), contains various amendments to the Taft-Hartley Act, 29 U.S.C. §§ 141-97. Thus, the sections of the LMRDA which might have a bearing on the USWA's section 27 are Titles I and IV.

laws."[59] It should be noted that nothing in Title I protects a right to *be* a candidate. Rather, the right involved is phrased in terms of a member's right to *nominate* candidates.[60] Furthermore, members do not enjoy an absolute right to nominate anyone they choose without regard for his or her eligibility under any valid union candidacy qualification rules. Rather, section 101(a)(1) of Title I guarantees to every member "*equal* rights . . . to nominate candidates."[61]

In *Calhoon v. Harvey*,[62] the United States Supreme Court established the limits to the Title I nomination right. The Court held that section 101(a)(1) is "no more than a command that members and classes of members shall not be discriminated against in their right to nominate and vote . . . 'subject to reasonable rules and regulations.' "[63] Following *Calhoon*, as long as no members are denied a privilege or right to vote which the union has granted to others, there is no violation of Title I.[64] Therefore, assuming it is applied even-handedly, section 27 will not constitute the kind of discriminatory treatment which the *Calhoon* Court felt would violate Title I since all USWA members will still have equal rights to vote for any *eligible* candidates. Furthermore, the USWA ban on "outsider" support will fall on all candidates equally. Under the *Calhoon* analysis, the fact that section 27 might deprive a particular candidate of a substantial portion of his anticipated financial support while leaving intact another candidate's more traditional sources must be regarded as irrelevant.

Although section 27 does not appear to violate Title I, this does not end the inquiry into the provision's legality under the LMRDA. Since a potential candidate's continued eligibility will depend upon his or her compliance with section 27's ban on "outsider" support, section 27 functions as a qualification for union office. Although this qualification, if evenly applied, is beyond the scope of a member's Title I rights, it does fall within the scope of a candidate's rights under Title IV.[65]

Title IV of the LMRDA sets the standards for eligibility and qualifications of candidates and officials of labor organizations. It also sets up election procedures and establishes an administrative and judicial procedure for challenging union elections.[66] Title IV also sets the max-

59. 29 U.S.C. §§ 411(a)(1) (1976). *See id.* §§ 411-15.
60. Gammon v. Int'l Ass'n of Machinists, 199 F. Supp. 433 (N.D. Ga. 1961).
61. 29 U.S.C. § 411(a)(1)(1976) (emphasis added).
62. 379 U.S. 134 (1964).
63. *Id.* at 138 (quoting 29 U.S.C. § 411(a)(1) (1976)).
64. 379 U.S. at 139.
65. 29 U.S.C. §§ 481-484 (1976).
66. Calhoon v. Harvey, 379 U.S. at 138.

imum term of office for the officers of international and national unions, guarantees all candidates access to the membership lists, and prohibits the use of union or employer funds to promote an individual's candidacy. Section 401(e) of Title IV provides:

> 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 be eligible* to be a candidate and to hold office (*subject to* section 504 and to *reasonable qualifications* uniformly imposed) and 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.[67]

Title IV also creates a mechanism for challenging the validity of a completed election.[68] First, the member must exhaust all remedies available within the union.[69] If the member does not receive satisfaction within the union, he or she may file a complaint with the Secretary of Labor who initiates an investigation.[70] If the Secretary finds probable cause to believe that a violation of Title IV has occurred, he must file suit in a federal district court seeking to overturn the election.[71] If the court finds that a violation of section 401 has occurred which may have affected the outcome of the election, the court must void the election and direct a re-run.[72]

In *Calhoon v. Harvey*,[73] the United States Supreme Court ruled that disputes relating basically to the eligibility of candidates for office "fall squarely within Title IV of the [LMRDA] and are to be resolved by the administrative and judicial procedures set out in that Title."[74] Thus, any candidate aggrieved by a candidacy qualification which is not also a Title I violation (for example, by a candidacy qualification which is unreasonable but uniformly imposed) will not be able to challenge it until *after* the election has been held. The candidate may then do so only through a complaint to the Secretary of Labor.[75]

67. *Id.* § 481(e) (emphasis added). Section 504 of the LMRDA prohibits members of the Communist Party and convicted felons from holding union office. *Id.* § 504.

68. *Id.* § 482.

69. *Id.* § 482(a). Section 27 provides that decisions of the Campaign Contribution Administrative Committee are final and binding and not reviewable within the USWA. For the text of Section 27, *see* note 27 *supra*. Exhaustion of internal remedies would not require a member to attempt to secure amendment of the union's constitution, since the "amendment process is not a 'remedy' to which Congress has mandated resort." Brennan v. Local 122, Clothing Workers, 564 F.2d 657, 659 (3d Cir. 1977).

70. 29 U.S.C. § 482(b) (1976).

71. *Id.*

72. *Id.* § 482(c)(2).

73. 379 U.S. 134 (1964).

74. *Id.* at 141.

75. In so holding, the *Calhoon* Court reasoned:

In his concurring opinion in *Calhoon*, Justice Stewart criticized the majority's relegation of all challenges to eligibility rules to the post-election procedures. He pointed out that "simply by framing its discriminatory rules in terms of eligibility, a union can immunize itself from pre-election attack in a federal court even though it makes deep incursions on the equal right of its members to nominate, to vote, and to participate in the union's internal affairs."[76] Justice Stewart felt that the majority's narrow reading of Title I rights and its refusal to allow any pre-election litigation in federal courts sharply reduced meaningful protection for many of the rights which Congress had created.[77] As one observer aptly noted, without a pre-election remedy "the Secretary and the courts can only try to unscramble the egg."[78]

As noted, section 27 of the USWA constitution does not appear to abridge any of the rights guaranteed to union members by Title I of the LMRDA.[79] Nevertheless, if its validity is to be sustained,[80] section 27 must also comport with the election provisions of Title IV. If it is subsequently determined by the Secretary of Labor that section 27 has violated rights guaranteed by Title IV, and then determined by a court that such violation may have affected the outcome of an election, any election conducted under section 27 will be overturned.[81]

Title IV provides that every union member in good standing "shall be eligible to be a candidate . . . subject to . . . *reasonable qualifications* uniformly imposed."[82] The validity of section 27 will thus hinge upon its "reasonableness."[83]

> It is apparent that Congress decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest. . . . In so doing Congress . . . decided not to permit individuals to block or delay union elections by filing federal-court suits for violations of Title IV. Reliance on the discretion of the Secretary is in harmony with the general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts.

Id. at 140.

76. *Id.* at 143 (Stewart, J., concurring).

77. *Id.* at 146. The *Calhoon* decision is not without its critics. *See, e.g.*, Note, *Union Elections Under the LMRDA*, 74 YALE L.J. 1282 (1965), which points out that "[u]nlike the pre-election case in which a successful suit prevents the defendants from taking office, the post-election case allows those illegally in office to enjoy its benefits during the period of litigation." *Id.* at 1286-87 (footnotes omitted).

78. Speech by J. Murphy, *The Supreme Court 1976-77 Term*, in LABOR LAW DEVELOPMENTS 1978 at 16 (Southwestern Legal Foundation, Proceedings of the Twenty-Fourth Annual).

79. *See* text accompanying notes 58-64 *supra*.

80. *See* text accompanying notes 65-67 *supra*.

81. *See* text accompanying notes 68-72 *supra*.

82. 29 U.S.C. § 481(e) (1976) (emphasis added).

83. As always, the divination of the "reasonable" is a challenge. In the debates over section 401(e), Senator Barry Goldwater (R. Ariz.) criticized the use of so ambiguous a term:

> In this section, . . . there is a veritable deluge of such words as "reasonable," "fair,"

REASONABLENESS OF CANDIDACY QUALIFICATIONS

Assessment of the "reasonableness" of the USWA requirement that candidates eschew nonmember support necessitates an examination of the interpretations given the term "reasonable" in the context of other union elections. This section will examine judicial interpretations of the term, as well as the administrative interpretation placed upon the term by the United States Department of Labor. It will then analyze the provisions of section 27 according to these judicial and administrative "reasonableness" standards.

Judicial Analyses of Reasonableness

In *Wirtz v. Local 6, Hotel, Motel & Club Employees Union*,[84] the Secretary of Labor challenged a union bylaw which limited eligibility for major offices to those members who had previously held a union office. Writing for the Supreme Court, Justice Brennan pointed out that during the debates over the LMRDA congressional reluctance to intervene unnecessarily in union affairs "was balanced against the policy expressed in the Act to protect the public interest by assuring that union elections would be conducted in accordance with democratic principles."[85] Whether a given provision is a "reasonable qualification," Justice Brennan explained, "must be measured in terms of its consistency with the LMRDA's command to unions to conduct 'free and democratic' union elections."[86]

The prior office qualification in *Local 6* rendered ninety-three percent of the union's members ineligible to run for the union's major offices.[87] Although this fact appears to have been enough to condemn the

> "interested," etc. used to qualify the rights and remedies the bill professes to confer. These adjectives are undefined and their use throws an impossible burden of definition on the administrative officials and the courts which must apply them. Nothing in the legislative history of the bill . . . sheds any light on what these terms mean, their scope, or their limitations.

105 CONG. REC. 10101 (1959). Senator Jacob Javits (R. N.Y.), on the other hand, saw no particular problem in adopting a "reasonableness" standard. He explained:

> Who determines what is reasonable? That is determined by the same body which always determines such questions in American public life—the court. The courts determine whether a driver is reasonable when he hits a pedestrian. The courts determine whether somebody acted reasonably in the commission of a crime. The court determines what is reasonable every day. The court will do so in this instance. We have lodged the power where it belongs.

105 CONG. REC. 6029 (1959).

84. 391 U.S. 492 (1968).

85. *Id.* at 496. A pervasive theme in the congressional debates over the LMRDA had been the protection of the rank-and-file through democratic self-government, thus keeping the leadership more responsive to the membership. *Id.* at 497.

86. *Id.* at 499.

87. *Id.* at 502.

bylaw as unreasonable,[88] the Court considered a number of additional factors in reaching its decision. First, the Court noted that the practical effect of the Local 6 bylaw was to sharply curtail opposition to the union's incumbent party by preventing dissident members from qualifying as candidates.[89] The fact that the administration of Local 6 apparently had been an enlightened one was deemed irrelevant by the Court. Justice Brennan noted that Congress designed Title IV to eliminate the possibility of abuse by entrenched leaderships, whether benevolent or malevolent ones.[90] Second, the Court weighed the rationale advanced by the union for adopting the bylaw. Local 6 argued that the prior office rule was a reasonable means of ensuring that candidates would have the experience and the capabilities to handle the responsibilities of a major union office.[91] The Court rejected the union's justification, indicating that it was based upon a false premise that rank-and-file union members are unable to distinguish qualified from unqualified candidates without a demonstration of their performance in other offices. Justice Brennan noted that "Congress' model of democratic [union] elections was political elections in this country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots."[92] Finally, the Court found it significant that the bylaw in question was virtually unique in trade union practice.[93] Of the sixty-six largest unions in America, only Local 6 and the International Ladies Garment Workers Union had this prior office qualification.[94] After considering all of the foregoing factors, the *Local 6* Court held the bylaw in question to be an unreasonable candidacy qualification.[95]

In *Usery v. Local 1205, Transit Union*,[96] the United States Court of Appeals for the First Circuit had occasion to examine the effect of a candidacy qualification on potential insurgents. The Transit Union had a requirement which disqualified any candidate who had not at-

88. The Court stated that "plainly, given the objective of Title IV, a candidacy limitation which renders 93% of union members ineligible for office can hardly be a 'reasonable qualification.'" *Id.*

89. *Id.* at 502-03.

90. *Id.* at 503.

91. *Id.* at 503-04. This argument earlier had persuaded the United States Court of Appeals for the Second Circuit that the rule was reasonable. 381 F.2d 500 (2d Cir. 1967).

92. 391 U.S. at 504.

93. *Id.* at 505.

94. Unlike Local 6 of the Hotel, Motel & Club Employees, the Ladies Garment Workers provided an alternate route to office by offering members a course in union management. *Id.* Thus, the I.L.G.W.U. bylaw did not operate as a bar to candidacy.

95. *Id.*

96. 545 F.2d 1300 (1st Cir. 1976).

tended six union meetings for each of the two years preceding the election. Although the practical effect of this rule was that ninety-four percent of the members were disqualified, the First Circuit did not give that statistic conclusive weight. Rather, the court held that "[t]he question is not only how many were disqualified but how burdensome was the qualification."[97] According to the court, the congressional purpose underlying Title IV was to ensure open elections and to limit candidacy restrictions to those which do not invite abuse by entrenched incumbents.[98]

The United States Supreme Court again addressed the issue of reasonable qualifications in *Local 3489, USWA v. Usery*.[99] The USWA constitution provided that to be eligible for local union office a candidate must have attended at least one-half the regular local meetings for the preceding three years.[100] Since the rule barred 96.5% of the members from holding office, the Secretary of Labor argued that it had a substantial anti-democratic effect on local union elections.[101] The Supreme Court granted certiorari in the case to resolve a conflict between the United States Courts of Appeals for the Sixth and Seventh Circuits on the reasonableness of the USWA meeting attendance requirement.[102]

Writing for the majority, Justice Brennan began by quoting his observation in *Local 6*: "Congress plainly did not intend that the authorization in § 401(e) of 'reasonable qualifications uniformly imposed' would be given a broad reach."[103] Since Congress asserted a vital public interest in assuring free and democratic elections, Justice Brennan concluded that the "reasonableness" of any qualification must be measured against the LMRDA's command to unions to conduct democratic elections.[104] The *Local 3489* Court then expressly weighed the anti-democratic effects of the meeting attendance rule against the interests

97. *Id.* at 1303. The First Circuit did not define its concept of "burdensome," but did state that by adopting so prolonged an attendance requirement Local 1205 had erected "too high a barrier under a statute whose purpose is to guarantee union democracy." *Id.* at 1304.

98. *Id.*

99. 429 U.S. 305 (1977).

100. USWA CONST., art. VII, § 9(c) (1968) (cited in 429 U.S. at 307 n.1).

101. 429 U.S. at 307-08.

102. Brennan v. Local 3489, USWA, 520 F.2d 516 (7th Cir. 1975), rejected the provision as an unreasonable qualification for office, while Brennan v. Local 5724, USWA, 489 F.2d 884 (6th Cir. 1973), upheld the same provision as a reasonable rule. Furthermore, in Usery v. Local 1205, Transit Union, 545 F.2d 1300 (1st Cir. 1976), the First Circuit rejected a similar attendance rule. *See* text accompanying notes 96-98 *supra*.

103. 429 U.S. at 309 (quoting Wirtz v. Local 6, Hotel, Motel & Club Employees Union, 391 U.S. 492, 499 (1968)).

104. 429 U.S. at 309.

urged by the union in its support.[105] The union argued that the rule encouraged attendance at meetings and assured more qualified officers by limiting the field of eligible candidates to those who had demonstrated an interest in the union by attending the requisite number of meetings.[106] The Court noted that the requirement had done little to encourage attendance and concluded that in the LMRDA Congress had determined to leave the assessment of a candidate's knowledge and ability to the judgment of the membership in an open election, "unfettered by arbitrary exclusions."[107]

The anti-democratic effects of the provision, according to the Court, were its exclusion from candidacy of a large number of the members,[108] the burden of requiring a potential candidate to decide eighteen months prior to an election whether to comply with the rule[109] and the rule's potential to perpetuate an entrenched leadership.[110] Concluding that the anti-democratic effects here outweighed the union's interests in maintaining the provision,[111] the Court found the USWA attendance qualification to be unreasonable and thus violative of the LMRDA.[112]

Thus, the cases which have heretofore judged the reasonableness of candidacy restrictions have concerned qualifications based on such matters as meeting attendance[113] or prior officeholding.[114] In making this "reasonableness" determination the courts have focused on a variety of factors: (1) whether the operative effect of the rule is to disqualify a significant proportion of the union's membership from holding

105. *Id.* at 310.

106. *Id.* at 312.

107. *Id.*

108. The Court stated that "[a] requirement having that result obviously severely restricts the free choice of the membership in selecting its leaders." *Id.* at 310.

109. *Id.* at 311. The Court noted that most election contests are galvanized by some issue which may well not exist 18 months before the election is to be held. The USWA provision would require a potential candidate to attend 18 of the 36 monthly meetings immediately preceding the election, so by the time the issue arose it would be too late for many interested members to qualify.

110. The Court stated that "[p]rocedures that unduly restrict free choice among candidates are forbidden without regard for their success or failure in maintaining corrupt leadership." *Id.* at 312.

111. *Id.* at 310.

112. *Id.* At its 1978 convention, the USWA adopted a new eligibility rule which requires a candidate to have attended only one-third of the regular local meetings for the 24 month period preceding the election. USWA CONST., art.VII, § 10 (1978). Reportedly, the United States Department of Labor had given its imprimatur for this reduced requirement. *See* USWA Proceedings, *supra* note 19, at 216-20.

113. Local 3489, USWA v. Usery, 429 U.S. 305 (1977); Wirtz v. Local 153, Glass Bottle Blowers Ass'n, 389 U.S. 463 (1968); and Usery v. Local 1205, Transit Union, 545 F.2d 1300 (1st Cir. 1976).

114. Wirtz v. Local 6, Hotel, Motel & Club Employees Union, 391 U.S. 492 (1968).

office; (2) whether the rule tends to perpetuate an entrenched leadership by discouraging challenges by insurgents; (3) whether the rule meets a legitimate need of the union; and (4) whether the rule is unique in trade union practice.

The Department of Labor's Interpretation of "Reasonable Qualifications"

Paralleling the judicial construction of the reasonableness of various candidacy qualifications[115] are the United States Department of Labor's interpretative regulations on the LMRDA.[116] According to the Department of Labor, which is charged with the responsibility of enforcing the LMRDA, a dominant purpose of the Act is to ensure members the right to full participation in the governing of their union.[117] Therefore, the Department has taken the position that any restriction upon the right of members to be candidates should be closely scrutinized to determine whether it furthers a union purpose important enough to justify subordinating the individual member's right to run for union office.[118] The Department's interpretative guidelines to the LMRDA state that *no* qualification should be sustained unless it is shown that the electors cannot be relied on to make mature judgments themselves when they vote as union members.[119]

With regard to the reasonableness of a candidacy qualification, the Department has acknowledged that the term "is not susceptible of precise definition"[120] but has noted that the following factors are relevant to the reasonableness inquiry: (1) the relationship of the qualification to the legitimate needs and interests of the union; (2) the relationship of the qualification to the demands of holding a union office; (3) the impact of the qualification in light of the congressional purpose of fostering the broadest possible participation in union affairs; (4) a comparison of the particular qualification with the requirements for holding office generally prescribed by other labor organizations; and (5) the degree of difficulty in meeting a qualification by union members.[121] Finally, the Department of Labor has said that qualifications which appear to be reasonable on their face may be improper if they are either applied in an unreasonable manner or are not imposed uni-

115. *See* text accompanying notes 84-112 *supra*.
116. 29 C.F.R. §§ 452.1-452.138 (1978).
117. *Id.* § 452.35.
118. *Id.*
119. *Id.* § 452.36(a).
120. *Id.*
121. *Id.* § 452.36(b).

formly.[122]

ANALYSIS OF SECTION 27

In gauging the "reasonableness" of a candidacy qualification under the LMRDA, the courts and the United States Department of Labor have considered a number of factors. The various formulations of factors can be reduced to a few essentials: (1) the proportion of the members disqualified by the provision; (2) the practice of other labor organizations; and (3) the impact of the qualification upon union democracy in light of a congressional policy favoring broad member participation. These factors have then been weighed against the union's justification for adopting the qualification.

Proportion of Members Disqualified by Section 27

Qualifications restricting a large proportion of a union's membership have been held to be unreasonable.[123] However, section 27, cast in the form of a prohibition on candidate support, is a restriction the courts have never before had occasion to consider. Attendance or prior office holding restrictions usually disqualify large percentages of members. Section 27, however, may actually disqualify only a single member, or perhaps none since each potential candidate will choose either to comply with section 27 or to accept "outsider" support and bring about his own disqualification.[124] The fact remains, though, that section 27 will make all USWA candidacies subject to a qualification which may or may not be a reasonable one.

In concept, the reasonableness of any rule should not turn solely upon the number of people affected by it.[125] Rules disqualifying upwards of ninety percent of an organization's membership present the easy cases. But a rule can be intrinsically unreasonable, regardless of the number of members directly affected. For example, in *Usery v. Dis-*

122. *Id.* § 452.53.

123. *See* text accompanying notes 84-112 *supra.*

124. The same argument has been made about meeting attendance qualifications. The United States Court of Appeals for the Sixth Circuit accepted this argument in Brennan v. Local 5724, USWA, 489 F.2d 884 (6th Cir. 1973), observing that members disqualify themselves "by their unwillingness to devote a few hours per month to Union affairs." *Id.* at 889. But, in Local 3489, USWA v. Usery, 429 U.S. 305 (1977), the Supreme Court rejected this reasoning where the rule in question had a restrictive effect on union democracy. *Id.* at 310.

125. The point was made in Brennan v. Local 3489, USWA, 520 F.2d 516 (7th Cir. 1975), *aff'd sub nom.* Local 3489, USWA v. Usery, 429 U.S. 305 (1977), where the circuit court held that "no particular percentage is accorded talismanic properties under the Act. . . . Rather, the entire fact situation surrounding the election is to be examined in making the reasonableness determination." *Id.* at 520.

trict 22, United Mineworkers,[126] the United States Court of Appeals for the Tenth Circuit reviewed a UMW rule that required a candidate for international office to obtain nominations from five local unions before he would be placed on the ballot. The union argued that the rule merely required a preliminary showing to gain a position on the ballot and thus did not disqualify anyone. The Tenth Circuit held that if the showing required was excessive, the rule would be an unreasonable one.[127] Since this rule could "exclude an undetermined number of otherwise qualified candidates for reasons unrelated to their ability to fulfill the duties of the office,"[128] the court found the rule to be an unreasonable candidacy restriction.[129]

The court also noted with disapproval that the UMW requirement could exclude from the ballot a candidate supported by a majority of members, while in the *District 22* case itself it had excluded the choice of a substantial percentage of members.[130] Similarly, if the USWA ban on nonmember support were applied to disqualify a candidate such as Mr. Sadlowski, section 27 would operate to remove from candidacy a member who in the 1977 election was the choice of a substantial minority of members.[131]

Finally, although only a handful of members will become candidates in any one election and thus be directly affected by the qualification/disqualification aspect of section 27, the prohibition on "outsider" support will affect any members who contemplate running for international office, all supporters of a candidate or prospective candidate, and all members who consider contributing five dollars or more or who consider buying a raffle ticket.

Impact of Section 27 on USWA Democracy

Another important analytical factor in assessing the reasonableness of a candidacy qualification is the rule's impact in light of the congressional purpose of furthering broad participation in union affairs.[132] Section 27 has several potential anti-democratic effects. First,

126. 543 F.2d 744 (10th Cir. 1976).
127. *Id.* at 748.
128. *Id.*
129. *Id.*
130. *Id.* at 749.
131. It should be noted that Sadlowski received almost 250,000 votes *after* the "outsider influence" issue had been widely discussed within the USWA throughout the 1977 campaign.
132. As Professor Clyde Summers observed, the "[g]uiding principle is freedom of the political process, and the underlying right is not so much that of the would-be candidate as the right of the union members to have full freedom of choice in selecting their officers." Summers, *supra* note 49 at 293.

the provision will strengthen the hand of the union's leadership against any potential insurgent candidates by narrowing the spectrum of available campaign contributions.[133] Second, by requiring everyone to declare his support in writing in order to contribute more than five dollars, section 27 may well have a chilling effect on member contributions to an insurgent candidate. Even under the most benign of entrenched leaderships, the leap from being able to stuff ten dollars into the "passed hat" to being required to sign a list of contributors to the dissident candidate may be too much for many members. Third, the elaborate recording and reporting requirements will not foster the broadest possible member financial participation in election campaigns. The detailed USWA regulations will give prospective candidates adequate notice of what types of activity are forbidden, but it will be difficult for even the most willing of candidates to assure himself that he will be in compliance. The volume of record-keeping, the likelihood of mistakes for which a candidate may be held accountable, the potential vicarious liability of the candidate for both his supporters' acts and those of unsolicited contributors, all indicate a considerable degree of difficulty in meeting section 27's standards. Finally, in order to comply, the candidate must forgo all nonmember support, even though it may be perfectly legal support under the provisions of the LMRDA.[134] This imposes a substantial financial burden on debatable ideological grounds.

Practice of Other Labor Organizations

In assessing the reasonableness of a questioned candidacy restriction, both the courts and the United States Department of Labor also look to the accumulated experience of other labor organizations.[135] Although section 27 has no counterpart among American labor organizations,[136] the rule's uniqueness obviously does not prove that it is

133. During the 1978 USWA convention, President McBride indicated to newsmen that he expected Sadlowski to run against him again and again with the financial backing of "Eastern liberals." Gary Post-Tribune, Sept. 22, 1978, at A1, col. 6.

134. The only types of financial support forbidden by the LMRDA are contributions from employers and support from union dues. *See* note 14 *supra.*

135. *See* text accompanying notes 93-94 and 121 *supra.*

136. Daily L. Rep. (BNA), Sept. 21, 1978, at 1. Labor organizations are required by 29 U.S.C. § 431(a) (1976) to file copies of their constitutions with the Secretary of Labor. Examination of the union constitution files in the offices of the Labor-Management Services Administration of the United States Department of Labor discloses no similar provisions among such major unions as the United Autoworkers, the Aluminum Workers, the Chemical Workers, the Electrical Workers, the United Mineworkers, the Iron Workers, the Meatcutters, the Boilermakers, the Ladies Garment Workers, the Railway Clerks or the Teamsters.

unreasonable. However, the fact that such a restriction is not a practice among trade unions does suggest that the provision is not necessary to assure competent union leadership. It should be noted, however, that the USWA is one of the few major unions to conduct its national elections by referendum, with the membership voting at thousands of local union polling places.[137] It seems likely that a national referendum would be more susceptible to "outsider interference" than a closed convention, so any bad experience the USWA has had with nonmember interference may not have been duplicated in any other union.

USWA Justification for Section 27

The LMRDA embodies a federal policy that a union's membership can be trusted to vote intelligently and reject any unqualified or incompetent candidates at the ballot box. The United States Department of Labor interpretative manual observes:

> A basic assumption underlying the concept of "free and democratic elections," is that voters will exercise common sense and good judgment in casting their ballots. In union elections as in political elections, the good judgment of the members in casting their votes should be the primary determinant of whether a candidate is qualified to hold office.[138]

The parallel drawn between union elections and political elections in the foregoing passage echoes Justice Brennan's observations in *Wirtz v. Local 6, Hotel, Motel & Club Employees Union*[139] that "Congress' model of democratic elections was political elections in this country."[140] In the arena of political elections, restrictions on candidates' access to the ballot are subjected to strict scrutiny and the state must show that any such restriction is justified by a compelling state interest.[141] Several writers have advocated the same standard for union candidacy restrictions.[142]

Section 401(e) itself states that "every member . . . shall be eligible . . . subject to . . . reasonable qualifications."[143] The statute thus articulates a rule of universal eligibility, subject only to reasonable

137. BUS. W., Sept. 21, 1974, at 112.
138. 29 C.F.R. § 452.35(a) (1978).
139. 391 U.S. 492 (1968).
140. *Id.* at 504.
141. American Party of Texas v. White, 415 U.S. 767 (1974); Storer v. Brown, 415 U.S. 724 (1974); Williams v. Rhodes, 393 U.S. 23 (1968).
142. *See, e.g.*, Note, *Union Elections and the LMRDA: Thirteen Years of Use and Abuse*, 81 YALE L.J. 410, 436 (1972).
143. 29 U.S.C. § 481(e) (1976).

qualifications. As with other remedial legislation,[144] the burden should be upon the union to justify any departure from that norm of universal eligibility. The case has been well stated by James R. Beaird, who argued that, in the LMRDA, Congress decided "that unions should be units of industrial democracy. Restrictions on the right to run for office . . . are departures from the democratic ideal. They should be sustained only upon a showing of real need."[145]

In *Goldberg v. Amarillo General Drivers Union No. 577*,[146] a federal district court required the defendant union to justify its eligibility restriction by showing that it was called for by "the legitimate needs or necessities" of the union.[147] Such a standard furthers the purpose of the LMRDA, which is the fostering of internal union democracy.

Section 27 was a product of the USWA's experience during the 1977 McBride-Sadlowski struggle. Local unions had presented 225 resolutions to the USWA Constitution Committee requesting that something be done to prohibit nonmember support of candidates.[148] President McBride argued in his keynote address at the convention that outside interests had attempted to influence the election so that the union's officers would be indebted to people and organizations other than the members. He stated that "there is no room for such divided loyalties and there is no community of interest between such organizations and the United Steelworkers of America."[149] Addressing the convention delegates again just before the vote on section 27, McBride urged that the labor movement should determine its direction from within, that the USWA should be able to control its own destiny, and that "the people who serve this union should be judged by . . . the membership of this union."[150]

As an economic fighting organization, the union cannot be blamed for wishing to insulate itself from the influence of employers or employer organizations. However, since contributions from employers are

144. *See* text accompanying notes 48-50 *supra*.

145. Beaird, *Union Officer Election Provisions of the Labor-Management Reporting and Disclosure Act of 1959*, 51 VA. L. REV. 1306, 1324 (1965).

146. 214 F. Supp. 74 (N.D. Tex. 1963).

147. *Id.* at 80.

148. USWA Proceedings, *supra* note 19, at 237-38.

149. *Id.* at 6. A more spirited rejection of outsider interference came from District Director Thrasher, who asked:

> Who were the outsiders who put the money in? They are my and your archenemies, the corporate executives, the stockbrokers, the bankers, plus a collection of so-called political power brokers throughout the United States . . . . I say . . . we don't need outsiders to run this union. We can run this union.

Id. at 246.

150. *Id.* at 252.

already forbidden by section 401(g) of the LMRDA, it would appear that the USWA was aiming elsewhere in adopting section 27. In banning all nonmember support, the USWA may consider itself to be merely improving upon the section 401(g) prohibition of employer contributions. Since the LMRDA policy is clearly that labor organizations should be free from infusions of employer money, it might seem that the USWA has simply taken this policy to its logical conclusion. However, the problem with this argument is that when Congress enacted the LMRDA in 1959, it had the chance to ban whatever contributions it felt would not square with national labor policy, and Congress did not see fit to ban nonemployer-"outsider" contributions.

The avowed purpose of the USWA qualification is the protection of the union from outside interference.[151] However, the union will be hard-pressed to demonstrate that contributions from nonmembers are inherently destructive of the labor organization since all outside involvement in union affairs is not deleterious to a union. For example, section 27 would go so far as to forbid a union member's spouse from contributing to a candidate. But family members are "outsiders" only in a technical sense, since they are most likely to share an identity of interest with the member. Likewise, any nonmember who is represented by the USWA in collective bargaining[152] has more than a passing interest in USWA politics but is forbidden to support a candidate. Fellow trade unionists from other unions are presumably not working to subvert the labor movement, but their contributions would also violate section 27.

As for the relationship of the section 27 qualification to the demands of union office, there is no demonstrable relation between receipt of contributions from nonmembers—even from "limousine liberals"[153]—and a candidate's loyalty to the union or ability to perform the functions of union office. Such judgments are best left to the members at the polling places. If they object to a particular candidate's funding, they can certainly send him that message via the ballot box.

The contribution controversy reveals a philosophical difference regarding the place of trade unions in society and, conversely, society in trade unions. AFL-CIO President George Meany branded the outsider

151. Regulations, *supra* note 39, at § I.

152. Currently, 20 states have so-called "right-to-work" laws prohibiting the union shop. LAB. REL. REP. (BNA) LRX 851 (1976). In such states a bargaining unit represented by the USWA would frequently include a number of nonmembers.

153. *See* text accompanying note 155 *infra*.

involvement in Sadlowski's 1977 campaign as unethical and illegal.[154] USWA President I.W. Abel viewed with alarm an attempt by "limousine liberals . . . to take the union away from the control of its members."[155] Furthermore, labor organizations have traditionally viewed any factionalism as tantamount to treason.[156] The late Walter Reuther, president of the United Auto Workers, exemplified a different philosophy when he observed that "in our rapidly changing and more closely interrelated and interdependent economic and political society, labor cannot be an island unto itself."[157]

The USWA candidacy qualification in section 27 is predicated on an irrebutable presumption that anyone accepting funds from nonmembers is somehow beholden to the donors and a danger to the labor organization. Government policy and judicial decisions favoring the democratic process suggest that the question would be better left to the union electorate.

In summary, under both the judicially articulated and administratively formulated reasonableness standards, section 27 appears to be an unreasonable qualification for union candidacy. In the face of a general federal policy favoring broad member participation and an unfettered right of candidacy, the USWA has placed an unnecessary hurdle in the path of potential candidates for union office. Any legitimate interests the union has in insulating itself from outside influences are outweighed by the provision's anti-democratic effects both within and without the USWA.

CONCLUSION

In an epilogue to a hard-fought presidential campaign in which the USWA administration charged that the insurgent candidate improperly accepted support from persons outside the labor movement, the USWA convention adopted a constitutional amendment, section 27, which makes the nonacceptance of "outsider" support a qualification for union office. Title IV of the Labor-Management Reporting and

154. Wall St. J., Jan. 11, 1977, at 8, col. 1.

155. *Id.* Jan. 13, 1977, at 14, col. 4.

156. One observer of the USWA has noted that "the penalty for bringing the outside community into an internal political contest is heightened susceptibility to charges of fomenting disunity or dualism or of giving aid and comfort to the enemy." L. ULMAN, THE GOVERNMENT OF THE STEEL WORKERS' UNION 174 (1962).

157. Reuther, *Labor Leadership—A Public Service*, in E. BAKKE, C. KERR, & C. ANROD, UNIONS, MANAGEMENT AND THE PUBLIC 128 (2d ed. 1960). Sadlowski's attorney, Joseph Rauh, reacted to section 27 in a similar vein: "I don't think trade unions can legally ban the public . . . . Why should this one institution in American life be free from public involvement?" Wall St. J., Jan. 13, 1977, at 14, col. 5.

Disclosure Act of 1959 regulates union election procedures and guarantees that all union members in good standing may run for office, subject to "reasonable qualifications" uniformly imposed. Although the section 27 qualification may be uniformly imposed, it is not "reasonable" within the meaning ascribed to that term by the courts and by the United States Department of Labor.

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