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A SETBACK FOR DEMOCRACY IN UNION ELECTIONS: *SADLOWSKI V. UNITED STEELWORKERS OF AMERICA*

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INTRODUCTION

The establishment of industrial peace in the United States had been an overriding governmental concern in the twentieth century. Modifications of the system have been necessary as government has attempted to organize an equitable and efficient system of industrial relations to resolve employer-employee disputes. To rectify perceived abuses of labor unions and to promote democratic processes within these unions, Congress enacted the Labor-Management Report and Disclosure Act (LMRDA) in 1959.[1]

Edward Sadlowski challenged the concept of democracy in labor unions by running for the office international president of the United Steelworkers of America in 1977.[2] Sadlowski raised campaign funds by soliciting non-union members for contributions.[3] After Sadlowski's defeat in the union election, the Steelworkers union amended its constitution by adding a provision prohibiting the future solicitation of campaign contributions from "outsiders," those not members of the union.[4] Sadlowski challenged the constitutional amendment of the union by commencing a legal action.[5] Although the district and appellate courts invalidated the union amendment, the Supreme Court held that the "outsider" rule was a valid exercise of union authority.[6]

This article discusses the LMRDA and its provisions for fair union elections and individual member rights in the union and describes the series of events that led to the Sadlowski litigation, summarizing the three court opinions involved. It concludes with a critique of the Supreme Court's decision which deviates from the Court's political spending doctrine and provides a barrier to the promotion of union democracy.

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1. Pub. L. No. 86-257, 73 Stat. 519 (codified at 29 U.S.C. §§ 153, 158-60, 187, 401-531 (1982)).

2. Sadlowski v. United Steelworkers, 645 F.2d 1114, 1115 (D.C. Cir. 1981) [hereinafter cited as *Sadlowski* II].

3. *Id.* at 1116.

4. *Id.*

5. Sadlowski v. United Steelworkers, 507 F. Supp. 623 (D.D.C. 1981) [hereinafter cited as *Sadlowski I*].

6. United Steelworkers v. Sadlowski, 457 U.S. 102 (1982) [hereinafter cited as *Sadlowski III*], *rev'g* 645 F.2d 1114 (D.C. Cir. 1981).

I. THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

In 1957 the Senate Select Committee on Improper Activities in the Labor-Management Field, popularly called the McClelland Committee, began extensive investigation of union abuses.[7] "For months the committee paraded across the public stage a series of sordid spectacles of union corruption and oppression."[8] In fact, the McClelland Committee heard over 1,500 witnesses, took over 46,000 pages of testimony, and summarized its findings in three reports.[9] The committee's work culminated in the passage of the Labor-Management Reporting and Disclosure Act of 1959,[10] also known as the Landrum-Griffin Act.[11]

The LMRDA was Congress' attempt to eliminate crime and corruption within unions[12] and to ensure union democracy.[13] The Senate report states that "[w]hat is required is the opportunity to influence policy and leadership by free and periodic elections."[14] Congress nevertheless did not want to interfere with union autonomy.[15] Although the initial drafts of the LMRDA focused upon reporting and disclosure requirements, the final version contained a "bill of rights" in Title I and procedures for fair and honest elections in Title IV.[16] The most relevant provisions of Titles I and IV are briefly described below.

A. *The LMRDA Bill of Rights*

The first provision of the union member bill of rights is the equal rights provision contained in LMRDA section 101(a)(1). The provision states:

> Every member of a labor organization shall have equal rights and privileges within such organizations 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 organ-

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7. Note, *Restrictions on "Outsider" Participation in Union Politics*, 55 CHI. [-]KENT L. REV. 769, 774-75 (1979).

8. Summers, *American Legislation for Union Democracy*, 25 MOD. L. REV. 273 (1962).

9. *Id.* at 273, n.1.

10. 29 U.S.C. §§ 153, 158-60, 187, 401-531 (1982); *supra* note 1.

11. Summers, *supra* note 8.

12. S. REP. No. 187, 86th Cong., 1st Sess. 1-5 (1959) *reprinted in* 1 N.L.R.B., LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, at 397-401 (1959).

13. In Trbovich v. United Mine Workers, 404 U.S. 528 (1972), the United States Supreme Court described the role of the LMRDA as follows:

> 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 530-31.

14. *Supra* note 12, at 6-7, *reprinted* in 1 NLRB, *supra* note 5, at 402-03.

15. *Id.*

16. Summers, *supra* note 8, at 274.

ization's constitution and bylaws.[17]

The provision was enacted to prohibit unions from discriminating against certain members by classifying them as "junior" members, thereby denying them full membership rights.[18]

While the provision guarantees every member the right to nominate candidates and vote in elections, the Supreme Court has held that the provision does not guarantee a member the right to be a candidate. Unions may establish reasonable eligibility requirements for union officers pursuant to Title IV of the Act.[19] Furthermore, the Court held that Title IV rather than Title I is the appropriate vehicle for challenging union elections.[20] Nevertheless, the equal rights provision still serves an important role in ensuring union democracy.

A second provision of the bill of rights is the freedom of speech and assembly provision contained in LMRDA section 101(a)2). The provision states:

> Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views . . . upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of such meetings.[21]

The purpose of this provision is to allow union members to speak out without fear of reprisal on important union matters.[22] Pursuant to this provision, a union member is protected from union disciplinary proceedings when he publishes an article that is critical of union officers,[23] even when he slanders a union official.[24] The member's freedom of speech and association is limited, however, by the union's right "to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."[25]

A third provision of the bill of rights is the protection of the right to sue which states:

> No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right

17. 29 U.S.C. § 411(a)(1) (1982).
18. Summers, *supra* note 8, at 284-86.
19. Calhoon v. Harvey, 379 U.S. 134, 140 (1964).
20. *Id.* at 138-41.
21. 29 U.S.C. § 411(a)(2) (1982).
22. *See, e.g.*, NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 194-95 (1967); Mallick v. Int'l Brh. of Elec. Workers, 644 F.2d 228, 235 (3d Cir. 1981).
23. Sheridan v. Liquor Salesmen's Union Local 2, 303 F. Supp. 999 (S.D.N.Y. 1969).
24. Keefe Bros. v. Teamsters Local 592, 562 F.2d 298 (4th Cir. 1977); Marshall v. Local 815, United Textile Workers, 479 F. Supp. 613 (E.D. Tenn. 1979).
25. 29 U.S.C. § 411(a)(2) (1982).

> of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employee association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceedings, appearance, or petition.[26]

The provision fosters union democracy by allowing a member to enforce his rights in a legal proceeding without fear of reprisal or barriers by the union. Thus, a union may not expel a member because he sued the union.[27]

A fourth provision protects members from increases in union membership fees without a vote.[28] A fifth provision protects members against improper disciplinary actions by granting members procedural due process rights.[29]

B. *Title IV Procedures for Fair Elections*

Title IV of the LMRDA is an attempt by Congress to provide fair procedures for union elections. Subsections 401(a) and (b) state the minimum period within which elections must be held. The section also mandates secret balloting.[30] Subsection 401(c) requires the labor union to mail any bona fide candidate's campaign materials at the candidate's expense. In addition, a candidate is allowed to inspect the membershp list once within thirty days of the election. A candidate also has the right to have an observer present at the polls when the votes are counted.[31]

A major provision of Title IV is subsection 401(g), which 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 an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.[32]

Under subsection 402(a), an aggrieved union member who has exhausted his union remedies or has not received a final decision within three months can file a complaint with the Secretary of Labor.[33] Under subsection 402(b), the Secretary is directed to investigate complaints

26. 29 U.S.C. § 411(a)(4) (1982).
27. Carroll v. Assoc. Musicians, Local 802, 235 F. Supp. 161, 172 (S.D.N.Y. 1963).
28. 29 U.S.C. § 411(a)(3) (1982).
29. 29 U.S.C. § 411(a)(5) (1982).
30. 29 U.S.C. §§ 481(a),(b) (1982).
31. 29 U.S.C. § 481(c) (1982).
32. 29 U.S.C. § 481(g) (1982).
33. 29 U.S.C. § 482(a) (1982).

and file a civil suit to set aside an election if he finds probable cause to believe the election violated Title IV of the LMRDA.[34] The district court may declare an election void and order a new election under the supervision of the Secretary of Labor.[35]

II. THE LITIGATION

A. *Prelude to the Litigation*

In 1973, Edward Sadlowski, Jr. ran for the directorship of the largest union district of the United Steelworkers of America (Union).[36] The Union declared that Sadlowski's opponent, who was supported by the incumbents, had won the election. Sadlowski requested that the Secretary of Labor institute a suit to invalidate the election. After the Secretary filed suit, the Union agreed to hold a new election. The Labor Department supervised the new election, and Sadlowski won by a substantial majority.[37]

In 1977, I.W. Abel, the international president of the Union, announced his retirement. In a heated campaign for the position vacated by Abel, Sadlowski ran against Lloyd McBride, who was supported by the Union hierarchy.[38] McBridge financed his campaign predominantly with funds donated by the union staff; Sadlowski financed his campaign with substantial contributions from nonmembers.[39] During the campaign, the union membership debated whether candidates should be allowed to receive funds from outside the Union.[40] In the election, McBride received 328,861 votes and Sadlowski received 249,281.[41] The Secretary of Labor refused Sadlowski's request to file suit to invalidate the election for alleged LMRDA violations and was upheld by the district court.[42]

The debate over outside election financing continued after the 1977 election. In 1978, the Union held its biennial convention which was attended by approximately 5,000 delegates elected from the local districts. At the convention, the delegates adopted Article V, section 27, as an amendment to its constitution by a ten-to-one margin. The amendment, known as "the outsider rule," prohibited candidates for high offices[43] from accepting or soliciting financial support, including direct and indirect support, from any non-member.[44] The outsider rule also provided

34. 29 U.S.C. § 482(b) (1982).
35. 29 U.S.C. § 482(c) (1982).
36. *Sadlowski II*, 645 F.2d at 1115.
37. *Sadlowski I*, 507 F. Supp. at 623-24.
38. *Id.*
39. *Sadlowski II*, 645 F.2d at 1115-16.
40. *Id.*
41. *Id.* at 1116.
42. *Sadlowski III*, 457 U.S. at 105.
43. *Sadlowski II*, 645 F.2d at 116.
44. The positions subject to the rule are the International President, International Secretary, International Treasurer, International Vice-President (Administration), International Vice President (Human Affairs), and the national director of Canada, and one district director for each district. USWA CONST., art. IV, § 1 (1976). The Union's

that the Union could promulgate regulations under that rule and could establish a three-person Campaign Contribution Administrative Committee (Committee) to administer the rule. Anyone who violated the rule could be disqualified from the election[45] and subjected to disciplinary action.[46] After the promulgation of the outsider rule, Sadlowski sued the Union to prevent it from enforcing the rule.[47] The Union's lawyers requested an advisory opinion from the newly created Committee stating that the outsider rule did not apply to election-related litigation expenses. The Committee obliged the Union lawyers by narrowly construing the outsider rule, stating:

> An intention to limit one's access to the judicial system, a province which is so fundamental the structure of government, cannot be inferred. It would have to be established by clear and convincing expressions of intent. This is not the case here. . . . This opinion is, of course, confined to services which are in fact legal services customarily performed by lawyers. The Committee recognizes the possibility that any ruling which it makes in general terms and in response to a broad inquiry may be misconstrued or distorted in an attempt to rationalize political activities as "legal services." It will deal with those questions whenever they arise on a case-by-case basis.[48]

The Committee further advised that it would examine on a case-by-case basis whether a lawsuit instituted by a candidate was a bona fide suit to enforce legal rights or a charade to secure political gains.[49]

International Executive Board is comprised of the officers subject to the rule. *Id.* art. IV, § 18.

45. The relevant language of the rule is as follows:
No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1, 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. For purposes of this Section, the term non-member means any person who is either not eligible for membership under Article III or not in good standing or any foundation, corporation or other entity whose funds are derived in whole or in part from any person not eligible for membership under Article III or not in good standing.
Sadlowski II, 645 F.2d at 1126-27.

46. The relevant language of the rule is as follows:
The International Executive Board shall adopt regulations, for incorporation into the International Union Elections Manual, as necessary to implement this provision and to assure conformity with the obligations prescribed in this Section. Such regulations shall include requirements for reporting by candidates and their supporters of information pertinent to administration of and compliance with this Section, with such frequency, not to exceed weekly, as the International Board deems appropriate.
There is hereby created a Campaign Contribution Administration Committee to administer and enforce this Section.
. . .
The Committee shall have the following powers:
. . .
(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, . . . the Committee shall . . . have the power to declare such candidate disqualified . . . .
Sadlowski II, 645 F.2d at 1126-27.

47. USWA CONST. art. XII; 645 F.2d at 1123.

48. *Sadlowski III*, 457 U.S. at 106.

49. *Sadlowski II*, 645 F.2d at 1117-18.

B. *The District Court Opinion*

Sadlowski challenged the outsider rule claiming that it violated:

(1) the first amendment rights of members and nonmembers;
(2) the National Labor Relations Act;
(3) subsection 101(a)(4) of the LMRDA; and
(4) subsection 401(g) of the LMRDA.[50]

The District Court for the District of Columbia invalidated the outsider rule and permanently enjoined the Union from enforcing the rule.[51]

The court stated that subsection 101(a)(4) of the LMRDA protected a member's right to sue his union and any curtailment of that right was prohibited.[52] The court went on to hold that the outsider rule, even as narrowed in scope by the Committee's advisory opinion, violated the right to sue protected by subsection 101(a)(4). It invalidated the rule in its entirety because it found that the remainder of the rule prohibiting contributions from non-members, could not be separated from the unlawful provisions and the rule as a whole would have a chilling effect upon a member's right to sue.[53] The court, exercising its power under section 102 of the LMRDA,[54] ordered the Union to announce the invalidation of the rule to the Union membership by publishing a notice in *Steel Worker* magazine for three consecutive months.[55] The court dismissed the first amendment claims finding there was no state action involved.[56]

C. *The Court of Appeals Opinion*

The Court of Appeals for the District of Columbia affirmed and modified the district court's decision.[57] The appellate court had "no difficulty in ruling that the outsider rule on its face violates th[e] right to sue provision."[58] The court stated that the rule would prohibit a union candidate from raising outside funds to finance election-related litigation or accepting legal services free of change if the lawyer's secretary were to work on the case (presumably because the lawyer would have to pay the secretary for his or her time). The court intimated that the Union passed the rule to prevent candidates from filing suits during campaigns, as Sadlowski did before, during, and after his bid for the Union presidency.[59]

The Union claimed that the advisory opinion issued by the Committee sufficiently narrowed the reach of the outsider rule to remove it from

50. *Id.* at 1118.
51. *Id.* at 1116.
52. *Sadlowski I*, 507 F. Supp. at 626-27.
53. *Id.* at 625.
54. *Id.*
55. Section 102 of the LMRDA authorizes a court to grant "such relief (including injunctions) as may be appropriate." 29 U.S.C. § 412 (1982).
56. *Sadlowski I*, 507 F. Supp. at 626-27.
57. *Sadlowski II*, 645 F.2d at 1125-26.
58. *Id.* at 1117.
59. *Id.*

the scope of the right to sue provision. The court disagreed. Although the main part of the Committee's advisory opinion stated that the rule did not apply to legal services, another part of the opinion warned that if the legal claim was not bona fide, but rather an attempt to promote the candidate's campaign, the Committee would apply the rule after examining the facts of the particular case.[60] The appellate court was as concerned about that section of the advisory opinion as was the district court. The appellate court, however, was more concerned about a regulation under the rule that was adopted after the district court opinion.[61] That regulation restated the union's position that legal services can be funded with outside resources, but warned that legal proceedings "designed to extract political gain" were not exempt from the operation of the rule.[62] The court of appeals held that the regulation violated the right to sue provision because legal suits filed during union elections would normally be initiated to advance political gains.[63] Since the outsider rule, on its face, violated the right to sue provision and the attempts to narrow the rule's reach were unsuccessful, the court held that the rule was invalid.[64]

In an attempt to limit the scope of the remedy prescribed by the district court, the Union argued that if the outsider rule violated subsection 101(a)(4), then the Union only should be enjoined from applying the rule to litigation expenses. Although the court rejected the district court's nonseparability argument,[65] it nevertheless invalidated the rule in its entirety, because it found that the remainder of the rule violated the freedom of speech provisions of subsection 101(a)(2) of the LMRDA.[66]

The Union contended that the appellate court could not rely upon the freedom of speech provision because it was not raised at the trial court level.[67] The appellate court noted that Sadlowski's complaint contained two first amendment causes of action. The court also noted that the freedom of speech provision contained within the LMRDA[68] had the same reach as the first amendment would have if it were to supply to unions. Therefore, the court reasoned that the Union had briefed this issue to the court and had the opportunity to defend itself against the first amendment claims. Thus, the court felt justified in relying upon the LMRDA freedom of speech provision for its decision.[69]

60. *Id.*

61. *See supra* notes 43-49 and accompanying text.

62. *Sadlowski II*, 645 F.2d at 1118.

63. *Id.*

64. "One would go a fair distance to find *any* lawsuit brought during the heat of a campaign that was not designed to extract political gain." *Id.* at 1119.

65. *Id.* at 1118-19.

66. The district court stated: "[t]he unlawful effects of the rule cannot be separated from the rule as a whole. Because the application of the rule to litigation support is not 'functionally independent' from the balance of the rule . . . the entire rule must be declared invalid and of no force and effect. . . ." 507 F. Supp. at 625.

67. *Sadlowski II*, 645 F.2d at 1119.

68. *Id.*

69. 29 U.S.C. § 411(a)(2) (1982).

The court stated that the freedom of speech provision was modeled after the first amendment,[70] and embodied freedom of association rights as well. The court next turned to the underlying rationale of the LMRDA for guidance in interpreting the freedom of speech and association provisions. It found that the underlying rationale for the LMRDA is the promotion of union democracy and since challengers face substantial barriers in a union election, the outsider rule hampers union democracy and violates the freedom of speech provision.[71]

The court, quoting from *Buckley v. Valeo*,[72] described the freedom of speech provision and its impact upon union elections as analogous to the first amendment and its impact upon federal elections. Since the *Buckley* opinion protects campaign contributions and expenditures as first amendment exercises, the court held that campaign contributions and expenditures in a union election should be similarly protected under the LMRDA.[73]

While the court recognized that the Union had a legitimate interest in protecting itself from nefarious outside influences, the outsider rule went too far.[74] The court also rejected the Union's argument that the rule was valid under the statute as a "reasonable" measure to protect its internal affairs. Rather, the court held that the total ban on outside financing was not a reasonable exercise of the Union's power to safeguard union affairs and members' responsibilities to the Union.[75]

The court bolstered its analysis be referring to subsection 401(g).[76] This subsection prohibits the use of union and employer funds to finance union elections. The court concluded that Congress did not intend to exclude financing from outside the union.[77] The congressional hearings and reports preceding the enactment of the LMRDA demonstrated that the unions were fraught with corruption. The court reasoned that Congress must have realized that union democracy could only be restored, and corrupt influences purged, if honest candidates could use outside financing to replace the corrupt, incumbent union staff.[78]

The court thus invalidated the outsider rule, with the exception of one narrow provision, which allows the Union's executive committee to delegate any other authority derived from other parts of the Union constitution, holding that part of the rule was valid as long as the Union did

70. *Sadlowski II*, 645 F.2d at 1120.
71. *Id.* at 1120-21.
72. 424 U.S. 1, 19 (1976).
73. *Sadlowski II*, 645 F.2d at 1122.
74. *Id.* at 1122-23.
75. *Id.* at 1123-24.
76. 29 U.S.C. § 481(g) (1982).
77. The court noted that, although Congress had not completely preempted the field of union financing, it simply could not have meant to allow the absolute prohibition advocated by the union. "Such construction would leave union members practically at the mercy of every entrenched group of incumbents." *Sadlowski II*, 645 F.2d at 1125.
78. *Id.* at 1124-25.

not delegate powers that purported to restrict election financing.[79]

D. *The Supreme Court Opinion*

1. The Majority Opinion

The majority opinion, authored by Justice Marshall, rejected Sadlowski's argument that the freedom of speech and association rights conferred upon union members by the LMRDA were analogous to the same first amendment rights that the Constitution confers upon citizens.[80] Relying upon the legislative history of the freedom of speech provision,[81] the Court concluded that Congress intended to provide union members with rights similar to those granted in the first amendment, but did not make those rights absolute. The members' free speech rights could be impinged by a union rule which reasonably protects union interests.[82] The court next examined the facts of the Sadlowski case and balanced Sadlowski's free speech rights against the Union's interest in preventing outside influences on its affairs. It found that the outsider rule does impinge upon rights that the LMRDA was enacted to protect; for example, a member's rights to criticize the union without reprisal and to run for union office.[83] The Court concluded, however, that the rule does not substantially restrict those protected rights[84] since outsider rule serves a legitimate interest of the union, and that union interest is one that Congress intended to protect under the LMRDA. It further noted that the legislative history indicated congressional concern with outsiders (racketeers) controlling the unions, and the outsider rule helps to prevent that evil.[85]

The Court rejected Sadlowski's argument that the rule was not reasonable because there were less restrictive means available, such as union adoption of a ceiling on contributions by outsiders. It found that the Union attempted to prevent even the aggregation of numerous small contributions by outsiders.[86] Additionally, the Court rejected Sadlowski's claim that the rule was unreasonable because it prohibited contributions by family members and relatives.[87]

The Court also found that the outsider rule did not violate the right to sue provision. Specifically, the rule makes no mention of election-related litigation; thus, those events are not covered. Additionally, the

79. *Id.* at 1125-26.
80. *Sadlowski III*, 457 U.S. at 104.
81. *Id.* at 108-09.
82. *Id.*
83. *Id.* at 108-10.
84. *Id.* at 113-14.
85. *Id.* at 116-17 (citing 105 CONG. REC. S6470-71 (1959) (Statement by Sen. McClellan)).
86. *Id.* at 118.
87. *Id.* The Court found that the USWA [United Steelworkers of America] had a reasonable basis for its decision to impose a broad ban because "[a]n exception for family members and friends might have created a loophole that would have made the rule unenforceable; the outsiders could simply funnel their contributions through relatives and friends." *Id.*

Court accepted the Campaign Contribution Administration Committee's advisory opinion and the regulation thereunder as evidence that the rule does not apply to election-related litigation.[88]

2. The Dissent

Justice White filed a dissenting opinion in which Chief Justice Burger and Justices Brennan and Blackmun joined.[89] The dissent stated that the LMRDA was enacted to promote union democracy through fair and open elections modeled after federal political elections.[90] The dissent found the outsider rule to be a drastic restriction of the members' right to free speech and right to run for office.[91] Quoting *Buckley v. Valeo*,[92] the dissenters noted that the challenger running for office would have severe limitations placed upon him if he were restricted in his campaign financing.[93] They felt that a limit on outsider contributions along with a disclosure requirement would serve the Union's interest in preventing outside influences without overly burdening the insurgent's ability to wage an effective campaign against the incumbent.[94]

III. Defining a Reasonable Union Campaign Spending Doctrine

The *Sadlowski* Court failed to follow essential principles of campaign spending jurisprudence in its determination of the nature of the rights infringed by the Union's contribution ban and the reasonableness of that infringement. The Court also failed to look beyond the analysis employed in *Buckley v. Valeo* to determine the nature of the union members' protected rights and totally omitted discussion of the "right to hear" doctrine of *First National Bank of Boston v. Bellotti*.[95] The Court's decision that union bans of outside contributions are permissible is diametrically opposed to the concept of freedom of speech in a democratic election that the Court has espoused in other recent cases. This opinion also illustrated the Court's increasing deference to contributions as protected speech in its political spending doctrine.[96]

A. *The Interests Protected by the Statutory Bill of Rights*

Since unions are private associations, they are not subject to the first amendment. Subsection 101(a)(2) of the LMRDA, however, con-

88. *Id.* at 119-20.
89. *Id.* at 121.
90. *Id.* at 122-24.
91. *Id.* at 123-27.
92. 424 U.S. 1 (1976) (per curiam).
93. *Sadlowski III*, 457 U.S. at 127.
94. *Id.* at 127-28.
95. 435 U.S. 756 (1978).
96. Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981) (the Court's most recent exposition of its political spending doctrine.) For a complete discussion of the changing status of contributions and expenditures in political campaigns, see Lansing & Sherman, *The "Evolution" of the Supreme Court's Political Spending Doctrine: Restricting Corporate Contributions to Ballot Measure Campaigns after* Citizens Against Rent Control v. City of Berkeley, 8 J. Corp. L. 104-08 (1982).

fers freedom of speech and assembly rights upon union members. Those rights are subject to the union's right to adopt "reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."[97] The Court adopted a two-part test: first, does a union rule interfere with a right within the statutory protection of the union bill of rights; and second, is such invasion reasonable?[98]

It should be noted that the Court's two-pronged test does not deny that first amendment *interests* are within the statutory ambit of subsection 101(a)(2). The difference in the standard first amendment analysis lies in the validity of the *restrictions* on those interests. The analysis stops at the mere recognition that protected interests are affected by a complete ban on outside contributions to a candidate in a union election. The Court's failure to discuss the nature of the protected rights is important, as that should be crucial in determining what constitutes a reasonable infringement on the rights of free speech and assembly conferred upon union members by the LMRDA.

The majority's exploration of the application of political spending precedent is limited to a footnote in which it attempts to distinguish the applicability of that body of law by stating:

> In several First Amendment cases, we have protected contribution and solicitation of the financial support necessary to further effective advocacy (citations omitted). These cases are not directly analogous, however. Contribution limitations potentially infringe the First Amendment rights of contributors as well as candidates (cite omitted). Here, the nonmember *contributors* have no right of expression protected by the statute.[99]

The Court's cursory examination of its campaign spending doctrine leaves room for a more detailed examination of the rights at issue. The most significant omission was the fact that the first amendment rights of candidates and contributors were not the exclusive issue because the rights of union members are directly affected when outside contributions are prohibited. The development of the Court's political spending doctrine, as enunciated in *Buckley v. Valeo*,[100] is instructive in this regard.

In *Buckley*, the Court decided that constitutionality of the 1974 amendments to the Federal Election Campaign Act of 1971.[101] This Act, as amended, set dollar limits on both direct and campaign expenditures and contributions to a candidate's campaign.[102] As a general prin-

97. 29 U.S.C. § 411(a)(2) (1982).
98. *Sadlowski III*, 457 U.S. at 111.
99. *Id.* at 113, n. 6.
100. 424 U.S. 1 (1976) (per curiam).
101. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3, *amended by* the Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (codified, as amended, in scattered subsections of §§ 2, 4, 5, 18, 26, and 47 U.S.C.) (1982).
102. The statutes at issue contain the following provisions: (a) individual political contributions are limited to $1,000 to any single candidate per election, with an overall annual

ciple, the Court decided that political spending restrictions limit effective communication and have the negative effect of limiting the interchange of ideas in the community, a result contrary to the purposes of the first amendment.[103] Expenditure ceilings were found to directly restrain the ability of candidates, citizens, and associations to engage in protected speech.[104] It distinguished contribution ceilings from expenditure ceilings in that contribution ceilings only marginally restrict the contributor's ability to communicate and the contributor maintains his individual freedom of expression.[105] Also, contribution limitations only marginally infringe upon first amendment freedom of association, since groups can make direct expenditures to effectively amplify their collective voice.[106]

The government restraints on the expenditures and contributions in *Buckley* were also distinguishable by the nature of the interests served in the reduction of each. The *Buckley* Court found that there is a constituionally sufficient government interest in avoiding the appearance of corruption in the political process, a result clearly possible in the context of a *quid pro quo* relationship between a contributor and a candidate.[107] It thus upheld the contribution ceilings because they served a compelling state interest and only marginally infringed upon protected first amendment rights.[108]

If the campaign spending analysis were to end here, the Court's holding in *Sadlowski* would be unobjectionable as judged by its own first amendment principles. Although the *Buckley* case did not legitimize a total ban on political contributions, at issue in that case were first amendment rights subject to a strict scrutiny test. The statutory rights subject to a lesser standard of scrutiny in the *Sadlowski* case could reasonably justify a complete ban on outside contributions. Furthermore, as the *Buckley* Court noted, the non-member contributors at issue in *Sadlowski* were not within the statutory freedom of speech protections granted by the LMRDA.[109]

Although the *Sadlowski* Court cited political spending cases, it did not venture to explain their impact. The Court declined to discuss their

limitation of $25,000 by any contributor; independent expenditures by individuals and groups "relative to a clearly identified candidate" are limited to $1,000 a year; campaign spending by candidates for various federal offices and spending for national conventions by political parties are subject to prescribed limits: (b) contributions and expenditures above certain threshold levels must be reported and publicly disclosed; (c) a system for public funding of Presidential campaign activities is established by subtitle H of the Internal Revenue Code; and (d) a Federal Election Commission is established to administer and enforce the legislation. *Buckley*, 424 U.S. at 7 (footnote omitted).

103. *Id.* at 19. "Being free to engage in unlimited political expression subject to a ruling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline." *Id.* at 19, n. 18.

104. *Id.* at 23.

105. *Id.* at 28-29.

106. *Id.* at 21-22.

107. *Id.* at 26-27.

108. *Id.*

109. *Sadlowski III*, 457 U.S. at 113, n. 6.

findings in *First National Bank of Boston v. Bellotti*.[110] The *Bellotti* case involved a Massachusetts statute prohibiting corporate spending in ballot measure (non-candidate) campaigns.[111] The Court framed the issue as whether the state statute abridged expression that was properly within the ambit of first amendment protection.[112] Thus, the identity of the contributor became irrelevant; the key was the first amendment right of the electorate to hear all arguments without the hinderance of state spending restraints.[113] The Court stressed the importance of the marketplace of ideas in the democratic system.[114]

After identifying the nature of the first amendment interests involved, the *Bellotti* Court's analysis next determined if the contribution ban served a compelling government interest in the least restrictive manner.[115] The Court found that the interest compelling contribution ceilings in *Buckley* was not present in the ballot measure context.[116] The only viable government interest that could be served in restraining corporate spending was "preserving the integrity of the electoral process. . . ."[117] That standard would be violated only if corporate spending overwhelmed the electorate and threatened the confidence of the citizenry in the government.[118] The *Bellotti* Court found that the record revealed no overwhelming or even significant corporate influence, hence, the contribution ban could not survive strict first amendment scrutiny.[119]

In *Sadlowski*, the Court indicated that the *Bellotti* case, along with the other campaign spending cases cited, was not directly analogous because the statute failed to protect the expression of non-member contributors.[120] The rationale of the *Bellotti* holding revealed that it is the danger of infringing upon the rights of the union members that is most pressing, not the rights of the non-member contributors who are without the statutory protections.[121]

The rights at issue can also be expanded by the Court's decision in

110. 435 U.S. 765 (1978).

111. MASS. GEN. LAWS ANN. ch. 55, § 8 (West 1977) (ruled unconstitutional in 1978). *See* MASS. ANN. LAWS ch. 55 § 8 (Michie/Law. Co-op. Supp. 1984)

112. *Bellotti*, 435 U.S. at 776.

113. *Id.* at 776-77.

114. *Id.*

115. *Id.* at 786. Although first amendment rights are absolute, they may be curtailed by government interests of vital importance. Elrod v. Burns, 427 U.S. 347 (1976). Thus, the first amendment permits reasonable regulation of speech connected activities in carefully restricted circumstances. NAACP v. Clairborne Hardware Co., 458 U.S. 886 (1982); Young v. American Mini-Theatres, Inc., 427 U.S. 50 (1976); Pell v. Prownier, 417 U.S. 817 (1974). However, free expression cannot be abridged or denied in the guise of regulation. Grayned v. Rockford, 408 U.S. 104 (1971).

116. *Id.* at 789-91.

117. *Id.* at 788-89.

118. *Id.* at 789-90.

119. *Id.* at 784. A constitutionally permissible time, place or manner restriction may not be based on either the content or the subject matter of the speech. Consolidated Edison Co. v. Public Serv. Co., 447 U.S. 530 (1980); Hudgens v. NLRB, 424 U.S. 507 (1976).

120. *Sadlowski III*, 457 U.S. at 113, n. 6.

121. *Bellotti*, 435 U.S. at 425-6.

Citizens Against Rent Control v. City of Berkeley[122] (*CARC*). There, the Court found unconstitutional an ordinance that placed a two hundred and fifty dollar ceiling on contributions to ballot measure campaigns.[123] Chief Justice Burger's majority opinion expressed the belief that campaign contributions are entitled to the strictest first amendment protections.[124] This view is consistent with the Chief Justice's concurring opinion in *Buckley*, in which he stated that "contributions and expenditures are two sides of the same first amendment coin."[125] It is different, however, from the lesser status accorded contributions in *Buckley*, which was a per curiam opinion of the court. The *CARC* Court found that the contribution ceiling could not stand because there was "no significant state or public interest in curtailing debate and discussion of a ballot measure."[126]

The importance of the *CARC* decision for *Sadlowski* is twofold. First, it reveals a breakdown of the former constitutional distinctions between contributions and expenditures, which can be read as consistent with the *Bellotti* analysis in which distinctions between contributor and contributions were eliminated. The *CARC* Court reasoned that "[t]he contribution limit thus automatically affects expenditures and limits on expenditures operate as a direct restraint on freedom of expression of a group or committee desiring to engage in political dialogue . . . "[127] The shift in the Court's attitude makes it reasonable to infer that the outside contributions at issue in *Sadlowski* have a sufficient nexus to the *candidate's* expression to warrant statutory protection. The *CARC* Court's emphasis on the importance of contributions in election campaigns should justifiably carry over to the microcosm of union democracy.

The second impacting factor from the *CARC* decision was the Court's refusal to allow even the most minimal restriction on contributions to survive when less restrictive alternatives were available. The Court found that "the public interest allegedly advanced by [the contribution ceiling]—identifying the sources of support for and opposition to ballot measures—is insubstantial because voters may identify those sources under the [disclosure] provisions. . . ."[128] This aspect of the *CARC* opinion is useful in determining the reasonableness of limitations in a union election campaign.

B. *Reasonable Limitations*

Under traditional first amendment analysis, government limitations on campaign spending must serve a compelling government interest in

122. 454 U.S. at 290 (1981).
123. Berkeley Election Reform Act of 1974, Berkeley, Cal. Ord. No. 4700-N.S. § 602 (June 4, 1974).
124. *CARC*, 454 U.S. at 298.
125. *Buckley*, 424 U.S. at 241.
126. *CARC*, 454 U.S. at 299.
127. *Id.*
128. *Id.* at 298-99.

the least restrictive manner.[129] The *Sadlowski* Court held that union limitations on campaign spending need only be *rationally related* to a *legitimate* union interest.[130] The legitimate union interest at issue was the reduction of outsider interference with union affairs.[131] Thus, the threshold analytical question concerned the rationality of the union limitation on the freedom of speech interests protected by the LMRDA.[132]

The Court accepted the legitimacy of the union's fear "that officers who received campaign contributions from non-members might be beholden to those individuals and might allow their decisions to be influenced by considerations other than the best interests of the union."[133] In the Court's political spending cases, that problem was referred to as the danger of the *quid pro quo* relationship between contributor and candidate.[134] In the context of strict scrutiny under the first amendment, avoiding even the appearance of a *quid pro quo* is justifiable as a compelling government interest.[135] In the context of reduced scrutiny under the LMRDA, the same interest seems to justify the union restrictions in *Sadlowski*. Large outside contributions could establish the appearance of a *quid pro quo* between union leaders and outside contributor.

If, however, a less restrictive alternative also satisfies the union interest, then the union rule is arguably overbroad and unreasonably strict. The Court apparently accepted that position by choosing to refute the visibility of Sadlowski's suggested less restrictive alternatives that ostensibly satisfied the same union interests.[136]

Sadlowski argued that a less restrictive alternative would only allow the union to place contribution ceilings on outside contributions, rather than the complete ban actually imposed.[137] The Court reasoned that:

> USWA [United Steelworkers of America] feared not only that a few individual nonmembers would make large contributions, but that outsiders would solicit many like-minded persons for small contributions which, when pooled, would have a substantial impact on the election. This fear appears to have been reasonable. In the 1977 election, Sadlowski received a significant percentage of his campaign funds from individuals who made contributions after receiving mail solicitations signed by prominent nonmembers.[138]

The Court's analysis directly contradicts its political spending doc-

129. *Sadlowski III*, 457 U.S. at 111; Brown v. Hartlage, 456 U.S. 45, 53-54 (1982). For a discussion of State regulation of political contributions and expenditures by private individuals, *see* Annot., 94 A.L.R. 3d 944 (1979). *See generally*, Campaign Financing of Internal Union Elections, 128 U. PA. L. REV. 1094 (1980).

130. *Sadlowski III*, 457 U.S. at 111-12.

131. *See* Note, *supra* note 7.

132. *See generally* Annot. 26 A.L.R. Fed. 806 (1976) (discussing construction of the freedom of speech and assembly provisions of LMRDA § 101(a)(2)).

133. *Id.* at 115.

134. *Bellotti*, 435 U.S. at 790-91; *Buckley*, 424 U.S. at 26-27.

135. *Buckley*, 424 U.S. at 26-27.

136. *Sadlowski III*, 457 U.S. at 118.

137. *Id.* at 118.

138. *Id.*

trine. The Court was concerned by the alleged danger from outside influence arising from a number of small contributions that allow a candidate for high union office to mount an effective campaign. In the past, the courts recognized the danger that an official would be personally indebted to a large-scale contributor. Although it only requires common sense to recognize that the quantum of campaign funds could have an impact on the outcome of an election,[139] the Court's political spending doctrine could not be more explicit in its opposition to limiting spending because of fear that the resulting message will influence the outcome of an election.[140] When considering the advantage of wealth in campaign, the *Buckley* Court stated that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment."[141]

If contribution ceilings were in effect, the only danger from outside contributions is posed by the influence of the different ideas espoused by a union candidate. In *Bellotti*, the Court stated that "the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments."[142] The *Bellotti* Court further stated that: "[t]o be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: The Constitution 'protects expression which is eloquent no less than that which is unconvincing.' "[143] It reasoned that contributions were "the type of speech indispensible to decisionmaking in a democracy."[144] Indeed, the essential right at issue in *Bellotti*, the electorate's right to hear all the arguments without interference,[145] was not mentioned in *Sadlowski*. Because of the nature of the infringed interest, the restraint at issue in *Sadlowski*, when viewed in conjunction with the less restrictive alternative of contribution ceilings, should have been examined under a different test.

Under strict first amendment scrutiny, the compelling state interest in *Bellotti* was that of "preserving the integrity of the electoral process, preventing corruption, and 'sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government'. . . ."[146] Corruption could be considered to occur if the democratic process was undermined by overwhelming the electorate and

139. For a discussion of the impact of corporate spending on the democratic election system, see Lansing & Sherman, *supra* note 96, at 89-95.

140. *See, e.g.*, *Bellotti*, 435 U.S. at 788-92.

141. *Buckley*, 424 U.S. at 48-49; *CARC*, 454 U.S. at 297 (citing *Buckley* 424 U.S. at 48-49 (citations omitted).

142. *Bellotti*, 435 U.S. at 791.

143. *Id.* at 790 (quoting Kingsley Int'l Pictures Corp. v. Regents, 360 U.S. 684, 689 (1959)).

144. *Id.* at 777 (citation omitted).

145. *Id.* at 776-78.

146. *Id.* at 788-89 (citing *Buckley*, 424 U.S. at 11); United States v. Automobile Workers, 352 U.S. 567, 570 (1957); United States v. C.I.O., 335 U.S. 106, 139 (1948) (Rutledge, J., concurring); Burroughs v. United States, 290 U.S. 534 (1934).

threatening the confidence of the citizenry in the government.[147] Although first amendment analysis is not to be directly incorporated into the union bill of rights, a similar test should apply if the same general principles are to serve as guidelines. The *Bellotti* test should be modified for the context of union elections. Under the *Sadlowski* Court's reduced scrutiny, a union spending restriction should be justifiable if there is a *significant* outside influence that threatens the confidence of the union's members in their democratic election system. That is a much lower standard than the *overwhelming* influence required by the *Bellotti* Court.[148]

The union restrictions in *Sadlowski* would not survive the modified *Bellotti* test. The *Bellotti* Court analyzed the undue influence only in terms of the amount of money contributed, which allowed an effective campaign and more complete dissemination of ideas.[149] Such spending encourages active participation in the decisionmaking process and allows the electorate to make better informed decisions. The *CARC* Court found that disclosure provisions were sufficient protection against influence from unknown sources in ballot measure campaigns.[150] When disclosure requirements are coupled with a contribution ceiling, the rationality of a complete ban on outside spending must fail the modified *Bellotti* test for improper influence on a union election campaign.

It is puzzling that the lower degree of scrutiny imposed by the reasonable provision lead the *Sadlowski* Court to conclude that the essential principles of political spending did not apply to union democracy. The Court has repeatedly stressed the importance of the marketplace of ideas for realizing the ideals of the first amendment. To conclude that elimination of outside contributions is justifiable because outside ideas may be influential is an assumption of the paternalistic attitude the Court has vehemently rejected. If first amendment guidelines are to be applied at all to the statutory freedom of speech, then it goes beyond reason to understand why any number of small contributions present a danger that can be reasonably restricted consistent with any notion of the meaning of union democracy.

IV. Developing Procedures for Democratic Union Elections

The Court's decision in *Sadlowski* is a major setback for union democracy. A prerequisite to union democracy is free and open elections preceded by vigorous discussion of the campaign issues and the candidate's positions on those issues.[151] The Court has sanctioned a union

147. *Id.* at 789.

148. *Bellotti*, 435 U.S. at 1424-26.

149. *See, e.g.*, *CARC*, 454 U.S. at 299 ("no significant state or public interest in curtailing debate and discussion of a ballot measure.") *Id.*

150. *Id.* at 298-89. "[T]here is no risk that the Berkeley voters will be in doubt as to the identity of those whose money supports or opposes a given ballot measure since contributors must make their identities known under . . . the ordinance, which requires publication of lists of contributors in advance of the voting." *Id.* at 298.

151. Congress has recognized the key role of elections in the process of union self-

rule that reduces the amount of money spent on elections and therefore limits the discussion of the issues.

In a union election, the incumbent has many advantages over his challengers. The incumbent has access to information regarding union officers, members, work sites, polling places, and nomination dates and places.[152] Additionally, the incumbent can use the union's staff, newspaper, and legal counsel.[153] Finally, the incumbent, as a union officer, comes into contact with a large percentage of the union's membership as a part of his job, whereas the challenger must continue to work at his specific job, restricting his exposure to a relatively small percentage of the union's membership.[154]

The incumbent's job brings him into contact with the union members on a daily basis. This may not be a great advantage in a small local union election, but as the size of the union electorate increases, the advantage becomes significant. The incumbent is known, at least in name, by the members. The challenger, however, must establish himself as a serious contender for office by communicating his position to the members. While personal contact is best in local elections, written communications are necessary in larger elections.[155] Communications between the members and the challenger are hampered because of the incumbent's control of membership lists and other vital information.[156]

The incumbent is under no duty to release to the challenger the lists of union members, officers, work sites, polling places, and nomination meetings and places. Under the LMRDA, the insurgent is entitled to see the membership list once within thirty days of the election and to have his mailings sent to the members at his own expense.[157] A general mailing to the members by the challenger may be cost-prohibitive. If the challenger does not know the officers and members, he will have to waste valuable time and resources attempting to discover that information. Also, if the nomination dates and places, and polling places are withheld from the challenger, he will have difficulty even getting nominated. These shortcomings of the LMRDA are inexcusable. The LMRDA should be amended to require unions to make available the list of members and officers, polling places and dates and nomination places

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government and, therefore, has surrounded it with many safeguards to provide for fair elections adhering to democratic principles and guaranteeing membership protection. N.L.R.B. v. Allis-Chalmers Mfg. Co., 388 U.S. 175 (1967); American Fed'n of Musicians v. Wittstein, 379 U.S. 171 (1964).

152. James, *Union Democracy and the LMRDA: Autocracy and Insurgency In National Union Elections*, 13 HARV. C.R.-C.L. L. REV. 247, 272-76 (1978).

153. *Id.* at 276-80.

154. Note, *Union Elections and the LMRDA: Thirteen Years of Use and Abuse*, 81 YALE L.J. 407, 461-62 (1972).

155. *Id.* at 461.

156. Compare challengers' rights, contained in 29 U.S.C. § 481(c) (1982) with those rights afforded the incumbent through his position as an officer of the union.

157. 29 U.S.C. § 481(c) (1982). *See* Marshall v. Pipeliners Local 798, 488 F. Supp. 847 (D. Okla. 1980) (holding that when union officer candidates had access to union membership list off union office premises and a similar right was denied the challenger, the union was guilty of discrimination in favor of the incumbents).

and dates to the challenger in sufficient time before nominations and elections are held. Violations of this amendment should result in an extension of the period for nominations and elections. A second violation of the amendment should be punishable by severe fines or imprisonment.

The incumbent can use the union newspaper for his own advantage by favorably covering his current activities in the newsletter.[158] While the LMRDA prohibits the union from using union funds and facilities for campaigning,[159] it is a simple task to compose ostensibly neutral stories that accomplish the same purpose as a direct campaign advertisement in the paper.

To remedy this situation the LMRDA should be amended to require the union to use its newspaper for election coverage. A debate page could be created, open to any qualified candidate. The members would thereby receive exposure to all candidates and their positions. Since unions already have newspapers, the cost of creating a debate page would be minimal. Furthermore, the debate page would provide a challenger a forum to communicate his message to the union membership without reliance on outside funds. Since union newspapers are currently misused by incumbents, in violation of the LMRDA, the proposed amendment to the LMRDA would merely equalize the opportunities for challengers.

The incumbent has other advantages over the challenger. The incumbent has access to the union's legal counsel when the inevitable legal battles in the context of the election arise. The challenger, on the other hand, must rely on his limited campaign funds to finance election litigation. One commentator has recommended a two-pronged approach to correct this problem. First, the incumbent should be held personally liable when maintaining an abusive or harassing litigation. Second, the challenger should be awarded attorney fees when he defends such an action.[160] Those reforms would have a salutary effect upon union democracy.

The incumbent can rely on his staff for contributions of money and time, since the jobs are jeopardized by an unfavorable election outcome.[161] The challenger, on the other hand, will have difficulties soliciting funds from members because he is probably unknown among the

158. For cases limiting such use of a union newspaper by an incumbent, *see* Donovan v. National Alliance of Postal and Federal Employees, 566 F. Supp. 529 (D.D.C. 1983); Camarata v. International Bhd. of Teamsters, 478 F. Supp. 321 (D.D.C. 1979); New Water-Dog Comm. v. New York City Taxi Drivers Union Local 3036, 438 F. Supp. 1242 (S.D.N.Y. 1977).

159. 29 U.S.C. § 481(g) (1982), see *supra* text accompanying note 32.

160. James, *supra* note 152, at 289-90.

161. However union dues may not be used to promote a candidate. *See e.g.*, Usery v. Stove, Furnace and Allied Appliance Workers, 547 F.2d 1043 (10th Cir. 1977); Donovan v. Local 719, 561 F. Supp. 54 (N.D. Ill. 1982). Additionally, an employer is prohibited from contributing money to a union candidate's election fund. *See* Marshall v. Local Union 20, 611 F.2d 645 (6th Cir. 1979). *See also* Annot., 53 A.L.R. FED. 585 (1981) (discussing prohibition against employer contributions to promote candidates in union elections).

rank-and-file. Additionally, union members may hesitate to donate funds to a challenger if economic conditions are difficult. The challenger's likely supporters are his relatives and friends. In the Sadlowski-McBride campaign, Sadlowski received funds from his wife and father, a retired steelworker receiving a pension negotiated by the union. There does not seem to be any compelling reason why a challenger should not be allowed to finance his election with contributions from non-members who have the union's or the challenger's interest at heart.

The outsider rule does not prohibit donations of time to a candidate's campaign. The purported reason for this concession is that people who donate their time to the union must have the interest of the union at heart and not other purposes. The incumbent generally will receive help from the union staff, again because their jobs are in jeopardy. While the union staff is not supposed to work for the incumbent on union time, it is difficult to police this restriction.

The limitation on outside financing is problematic in light of the one-party nature of unions. Contrary to political elections, where there are two established parties supporting candidates and platforms, in union elections, the challenger must establish his election organization each election. Unless he has run before, the challenger will have to expend much time and money before the union members consider him a serious candidate. The incumbent, however, is well-known. The Court's decision will hamper, if not preclude, the establishment of multi-party union elections.

There are two methods which would foster union democracy without subjecting the union to adverse outside influence. The first, contribution limitations, was rejected summarily by the Court. There does not seem to be any reason why contribution limitations along with disclosure of the contribution source would be adverse to the union. This system works well in federal political elections in which the threat of adverse influences is equally evident. As long as the contributions are limited to a reasonable amount, no one person could have a controlling influence on the candidate. Therefore, the candidate would not be obligated to the contributor and the contributor would not be in a position to force his will upon victorious candidate. Furthermore, the disclosure requirement would alert the members to the source of the contributions, and if the source did not have a legitimate concern for the well-being of the union, the disclosure would be a red flag to the members to carefully judge the challenger's platform and credibility. There can be no harm to a democratic union from the airing of ideas. Thus, the outsider rule unnecessarily hampers union democracy.

The second method to foster democratic elections would be allocation of union campaign funds to the candidates which would elminate all outside influence. The use of union funds for union elections is currently illegal under subsection 401(g) of the LMRDA.[162] Additionally,

162. 29 U.S.C. § 481(g)(1982).

unions and their members may be reluctant to use their funds for elections since those funds are part of the union's strike fund. Because the second method may be impractical, the first method should be adopted by a statutory reversal of the outsider rule.

V. CONCLUSION

The *Sadlowski* decision is a departure from the Court's general political spending doctrine and a setback for union democracy. If unions are to remain a vital force in American society, union democracy must be encouraged. The LMRDA must be amended so that challengers will have an equal opportunity in the election challenge.