Denver Law Review

Volume 62
Issue 2 *Symposium: Labor and Employment Law: A New Focus for the Eighties*

Article 17

February 2021

Local No. 82 Furniture Movers v. Crowley: Title I Relief When Title IV Claims Are at Issue under the LMRDA

David E. Doran

LOCAL NO. 82 FURNITURE MOVERS V. CROWLEY: TITLE I RELIEF WHEN TITLE IV CLAIMS ARE AT ISSUE UNDER THE LMRDA

INTRODUCTION

Congress enacted the Labor-Management Reporting and Disclosure Act of 1959[1] (LMRDA) to eliminate improprieties on the part of labor union management[2], and to provide rank and file union members the opportunity to participate meaningfully in union activities and decisions.[3] Toward this end, title I of the LMRDA sets forth a "Bill of Rights," which, among other things, guarantees union members' equal rights in electing union officials as well as the right to assemble and speak out on candidates.[4] Title IV of the LMRDA also addresses the topic of elections, although its requirements are more specific.[5] The remedies provided in each, however, are not consistent[6] and the overlap created by these titles has resulted in diverse lower court interpretations.[7]

Local No. 82, Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen and Packers v. Crowley[8] is the Supreme Court's latest attempt to clarify the LMRDA title I-title IV overlap problem. The Court held in *Crowley* that the invalidation of a union election, to protect rights guaranteed by title I, while the election is being conducted, is not an "appropriate" remedy under title I.[9] Setting aside an election, the Court ruled, is a remedy available only under title IV of the LMRDA.[10]

The impact of *Crowley* upon the circuit courts will vary depending on their respective treatments of this "overlap" problem. This comment will show that the *Crowley* decision, in all likelihood, will have a minimal effect on the future decisions of the lower courts as they decide whether

1. Labor-Management Reporting and Disclosure Act of 1959, Pub. L. No. 86-257, 73 Stat. 519, 29 U.S.C. §§ 153, 158-60, 186, 401-531 (1982), [hereinafter cited as LMRDA].
2. 29 U.S.C. § 401(c).
3. American Federation of Musicians v. Wittstein, 379 U.S. 171, 182-83 (1964).
4. LMRDA § 101, 29 U.S.C. § 411 (1982).
5. LMRDA § 401(e), 29 U.S.C. § 481 (1982).
6. *Compare* LMRDA § 102, 29 U.S.C. § 412 (1982) *with* LMRDA § 402, 29 U.S.C. § 482 (1982). Section 102 provides that actions against labor union management may be initiated in federal district court by any person whose rights have been violated under title I. Section 402, on the other hand, requires that complaints be filed with the Secretary of Labor, who in turn may then decide whether filing a civil action is appropriate under the circumstances.
7. *See generally*, Note, *Pre-Election Remedies Under the Landrum-Griffin Act: The "Twilight Zone" Between Election Rights Under Title IV and The Guarantees of Titles I and V*, 74 COLUM. L. REV. 1105, 1124-35 (1974). This comment, although not specifically focusing on the diversity of lower court interpretations, nonetheless discusses the various tests developed by the courts in trying to deal with the overlap problem.
8. 104 S. Ct. 2557 (1984).
9. *Id.* at 2568.
10. *Id.* at 2571.

title I relief can be sought when title IV claims also are at issue. If anything, in some circuits at least, the *Crowley* decision may make it easier for individual union members to obtain title I relief.

I. BACKGROUND

The LMRDA, originally introduced as the Kennedy-Ives Bill[11], was enacted after a committee headed by Senator McClellan[12] discovered abuses by labor union leadership which often resulted in a lack of democratic practices by the unions.[13] The Kennedy-Ives Bill was rejected in 1958 but was reintroduced in 1959 as the Kennedy-Ervin Bill.[14] Its election procedures provisions appear in the final version of title IV. The remedy of relying upon the Secretary of Labor to take action after an election, currently found in title IV, was the exclusive remedy then suggested for relief under the LMRDA from all election abuses.[15] The reason for relying upon the Secretary of Labor, as opposed to permitting individual lawsuits by aggrieved union members, was to allow unions maximum flexibility in resolving internal disputes without the fear of frivolous suits being brought during the election.[16]

Members of Congress, however, were concerned from the bill's inception about the adequacy of the relief afforded by reliance on the Secretary of Labor. Senators Goldwater and Dirksen objected, when the bill was introduced, to the lack of protection of individual union members' rights[17] and introduced a bill, ultimately rejected by the Senate, which would have provided more protection under title IV.[18] The alternative of private enforcement under title IV appeared in the House version of the bill[19], although this provision was eliminated when the bill went to the Joint Conference Committee.[20]

Title I was added as an amendment by Senator McClellan to provide more protection for individual union members' rights.[21] This amendment added a "Bill of Rights" but still required that suits be brought by the Secretary of Labor.[22] The amendment passed by a one vote margin.[23] Two days after the McClellan amendment was passed, Senator Kuchel introduced a new "Bill of Rights" which gave individual

11. S. 3974, 85th Cong., 2d Sess., 104 CONG. REC. 10,615 (1958).
12. The Select Committee on Improper Activities in the Labor Management Field.
13. S. REP. No. 187, 86th Cong., 1st Sess. 5-6 (1959), *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 at 401-02 (1959) [hereinafter cited as NLRB Legislative History].
14. S. 505, 86th Cong., 1st Sess. (1959).
15. *Id.* at §§ 302-03.
16. Calhoon v. Harvey, 379 U.S. 134, 140 (1964).
17. S. REP. No. 187, 86th Cong., 1st Sess. 70-71 (minority views).
18. 105 CONG. REC. 1259, 1272-84 (1959).
19. H.R. 8342, 86th Cong., 1st Sess. § 402 (1959), *reprinted in* 1 NLRB Legislative History, *supra* note 12, at 727.
20. H.R. REP. No. 1147, 86th Cong., 1st Sess. 35 (1959) (joint conference committee report on S. 1555).
21. 105 CONG. REC. 6475-76 (1959).
22. 105 CONG. REC. 6476 (1959) (§ 103).
23. 105 CONG. REC. 6492-93 (1959).

union members standing to sue under title I.[24] This amendment was overwhelmingly approved and replaced the earlier McClellan amendment, ultimately becoming title I of the LMRDA.[25]

Title I relief, therefore, is now enforced by individual suit brought in federal district court.[26] Title IV relief, on the other hand, requires that an aggrieved union member file a complaint with the Secretary of Labor, who has the discretion and exclusive authority to sue to remedy any violation under title IV.[27] There is very little legislative history to indicate which relief provision to use, that of either title I or title IV, when the relief sought overlaps both provisions. In particular, Congress gave no clear direction as to whether individual union members have standing to sue when abusive election procedures, addressed in title IV, also violate the rights granted in title I of the same act.[28]

The Supreme Court's decision in *Calhoon v. Harvey*[29] marked the first time the Court addressed the title I-title IV overlap problem. Therein, the Court held, in essence, that any complaint by individual union members alleging title I violations may not stand if those allegations are, in substance, violations under title IV.[30] The Court noted that challenges to nomination eligibility rules are fundamentally title IV claims.[31] The district court, therefore, had no jurisdiction to hear the case because title IV provides that the Secretary of Labor is the only party with standing to sue under this title.[32] The Court, however, did not hold in *Calhoon* that individual members were not entitled to bring suit, even during an election, where the claims are substantially based upon title I.

Eight years later, the Court once again discussed the extent to which an individual member has standing to sue when title IV claims are at issue. Although not specifically addressing the title I-title IV controversy, the Court ruled in *Trbovich v. United Mine Workers*[33] that an individual member could intervene in an action already brought by the Secretary of Labor under title IV. Though the Court reiterated that the administrative remedy is exclusive, it went on to state that, under certain circumstances, title IV does not bar an individual member from inter-

24. S. 1555, 86th Cong., 1st Sess. § 102 (as amended), 105 CONG. REC. 6720 (1959).

25. 105 CONG. REC. 6727 (1959).

26. LMRDA § 102, 29 U.S.C. § 412 (1982).

27. LMRDA § 402, 29 U.S.C. § 482 (1982).

28. *Crowley*, 104 S. Ct. at 2566-67; *see also* Comment, *Titles I & IV of the LMRDA: A Resolution of th Conflict of Remedies*, 42 U. CHI. L. REV. 166, 175 (1974) (commentator asserts that the legislative history indicates that Congress was barely aware of the existence of the overlap problem).

29. 379 U.S. 134 (1964) (plaintiffs brought suit to enjoin the union from conducting an election, alleging that the union by-laws deprived members of certain rights in the nomination procedure).

30. *Id.* at 138-41.

31. *Id.* at 138.

32. *Id.* at 140.

33. 404 U.S. 528 (1972).

vening in a title IV proceeding brought by the Secretary.[34] In so doing, the Court recognized that union members may have rights which the Secretary cannot adequately protect.[35]

The circuit courts' treatment of the LMRDA title I-title IV overlap problem in light of the Supreme Court's decisions has varied. It appears, therefore, that the Court's early decisions have left considerable discretion to the lower courts to determine when a title I individual member suit could be brought when title IV claims were also at issue. This diversity is shown by a review of some of the circuit court's title I-title IV overlap cases before *Crowley*.

The Second Circuit in *Schonfeld v. Penza*[36] ruled that, consistent with *Calhoon*, there is no title I jurisdiction where election eligibility is being challenged. Claims must be made first to the Secretary of Labor.[37] The court did go on to hold, though, that where substantive violations under title I are asserted, no appeal to the Secretary is necessary.[38] The test adopted by the *Schonfeld* court to deal with the title I-title IV overlap problem limited title I actions to cases in which the union has an established history or articulated policy of deliberate suppression of dissent.[39]

In *Depew v. Edmiston*[40], the Third Circuit narrowly construed *Calhoon* and developed another test to deal with the overlap problem. The court held that when discrimination in the nominating and voting rights of the members is the "core of the controversy," the complaint has sufficiently alleged a title I claim.[41] The court distinguished the case at hand from *Calhoon*, stating that the plaintiffs in this case alleged discrimination in the election process; they did not challenge the eligibility requirements which were at issue in *Calhoon*.[42] The Third Circuit, therefore, reversed the district court's holding that the lower court did not have jurisdiction to hear the title I claim.[43] The *DePew* decision was discussed in a subsequent Third Circuit case, *Amalgamated Clothing Workers Rank and File v. Amalgamated Clothing Workers, Joint Board*.[44] The court stated, in dictum, that merely because actions by union management may constitute violations of both title I and title IV, pre-election suits by individual members are not precluded.[45] The *Calhoon* decision does not prohibit title I suits

34. *Id.* at 536-37 (the intervention must be limited to claims which are consistent with claims already asserted by the Secretary of Labor).

35. *Id.* at 538-39. *See also, Pre-Election Remedies Under the Landrum-Griffin Act*, supra, note 7, at 1121 (This Note includes a discussion on the limitations of title IV relief.).

36. 477 F.2d 899 (2d Cir. 1973).

37. *Id.* at 902.

38. *Id.* at 903 (allegations raised the question of whether free speech and association rights were infringed).

39. *Id.* at 904.

40. 386 F.2d 710 (3d Cir. 1967).

41. *Id.* at 712-13. The Third Circuit was relying upon the equal rights provision of title I. LMRDA § 101(a)(1), 29 U.S.C. § 411(a)(1) (1982).

42. 386 F.2d at 710.

43. *Id.* at 715.

44. 473 F.2d 1303 (3d Cir. 1973).

45. *Id.* at 1306.

simply because they are related to election matters.[46]

The Sixth Circuit, in *McGuire v. Grand International Division of the Brotherhood of Locomotive Engineers*[47], seemed to suggest a broader, more prohibitive test than the Second Circuit based upon *Calhoon*. The *McGuire* court, citing *Calhoon*, held that the individual union member's complaint, as in *Calhoon*, asserted claims which were substantively title IV claims and were, therefore, barred by title IV.[48] In so holding, however, the court suggested that title I relief may never be available when title IV violations are at issue.[49]

The Seventh Circuit approach to the title I-title IV overlap problem is similar to that taken by the Sixth Circuit. In *Driscoll v. International Union of Operating Engineers, Local 139*[50], the court held that disputes relating to eligibility requirements fall exclusively within title IV, even when the eligibility requirement appeared to be a direct restraint on plaintiff's free speech rights protected by title I.[51] The *Driscoll* court stated that only "one exception to the broad mandate of *Calhoon*" existed:[52] where the union management had established a history of suppression so as to constitute a title I violation.[53] The court in *Driscoll* stated such a history did not exist in this case.[54]

McNail v. Amalgamated Meat Cutters and Butcher Workmen[55] set forth the Eight Circuit's approach to the title I-title IV overlap problem. The court relied upon *Calhoon*, ruling that the mere assertion of title I violations cannot invoke title I jurisdiction if they are essentially title IV claims.[56] But the court seemed to suggest a more lenient analysis for dealing with the overlap problem more consistent with the Second and Third Circuits. In ruling that the title I claims were substantially title IV claims, the Eight Circuit, citing the Second Circuits's *Schonfeld* decision[57], noted that the district court dismissed the title I claims only after evidence was presented which failed to establish discrimination proscribed by title I.[58]

---

46. *Id.*

47. 426 F.2d 504 (6th Cir. 1970) (union member complained that his candidacy for office was prevented by irregularities in the election process).

48. *Id.* at 507.

49. *Id.* at 508 ("Insofar as McGuire alleges election violations specifically dealt with in Title IV, we hold that the procedures of Title IV must be invoked, *notwithstanding a possible concurrent offense under Title I.*") (emphasis added).

50. 484 F.2d 682 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974) (candidates and members were required to execute a non-communist affidavit as a condition to eligibility).

51. *Id.* at 686. The union's non-communist affidavit requirement appears to at least suggest a colorable claim under title I which guarantees that every union member ". . . shall have the right . . . to express any views, arguments, or opinions. . . ." LMRDA § 101(a)(2), 29 U.S.C. § 411(a)(2) (1982). *See also infra* note 139.

52. 484 F.2d at 687.

53. *Schonfeld v. Penza*, 477 F.2d 899 (2d Cir. 1973). *See supra* text accompanying notes 36-39.

54. 484 F.2d at 688.

55. 549 F.2d 538 (8th Cir. 1977).

56. *Id.* at 540.

57. *Id.* The court relied expressly on *Schonfeld v. Penza*, 477 F.2d 899 (2d Cir. 1973).

58. 549 F.2d at 540-41.

The Ninth Circuit, in dealing with the title I-title IV overlap problem, also concentrates on whether discrimination in the election process exists before a title I claim can be made.[59] The test in this circuit is that *Calhoon* is the law in the case of eligibility requirements, but where discriminatory application of eligibility rules occur, such a violation falls directly within the scope of title I.[60]

The various circuits have adopted seemingly different tests to deal with the overlap problem because of the uncertainty caused by the indefiniteness of *Calhoon*, and the dearth of legislative history on the title I-title IV overlap problem. This is the legislative and judicial context in which *Crowley* was decided.

II. THE *CROWLEY* CASE

Plaintiff, Crowley, and others were denied admission at a meeting set for nomination of candidates for union office in Local No. 82, Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen and Packers. The reason given by the union was plaintiffs' failure to produce computerized dues receipts.[61] The district court found that admission had not been denied for such a failure in earlier union meetings.[62] In the two months prior to the November meeting, plaintiff Robert Lunnin demanded that the union hold the elections by open ballot rather than by the previously used mail-in method.[63] When the union refused, several members, including plaintiff John Lynch, announced their intention to run for union office.[64] This announcement apparently led the union to deny plaintiffs admission to the meeting. The district court found that officers of the Executive Board were admitted without producing any receipts for dues.[65]

After the meeting was called to order, nominations for officers were the first order of business.[66] Defendant Harris listed the names of members who were eligible for election to local union office and also those members who could not be nominated for failure to comply with the union's "24 month rule."[67] The plaintiffs were successful, despite these obstacles, in nominating Lynch for secretary-treasurer. When the nominations were concluded, however, defendant Griffith, the then-current

59. *E.g.*, Kupau v. Yamamoto, 622 F.2d 449, 453 (9th Cir. 1980).

60. *Id.* at 454. *See also* Rollison v. Hotel, Motel, Restaurant and Construction Camp Employees, Local 879, 677 F.2d 741 (9th Cir. 1982). In *Rollison*, the Ninth Circuit seemed to suggest that the existence of the title IV issues can never affect jurisdiction so long as a substantial title I claim is also made. *Id.* at 745.

61. Crowley v. Local No. 82, Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen and Packers, 521 F. Supp. 614, 625 (D. Mass. 1981), *aff'd*, 679 F.2d 978 (1st Cir. 1982), *rev'd*, 104 S. Ct. 2557 (1984).

62. *Id.*

63. *Id.* at 624.

64. *Id.* at 625.

65. *Id.*

66. *Id.* at 626.

67. *Id.* at 617 n.3. (Article II of the union constitution requires that a member must be in good standing for the 24 months prior to the election. Good standing includes payment of dues for each of those 24 months.).

secretary-treasurer, read Lynch's name as a nominee for president, and announced his own reelection running unopposed.[68] Based on these events, the plaintiff, Crowley, and several other members of the local union initiated an action alleging violations of title I and title IV of the LMRDA.[69]

The district court found that the plaintiffs were deliberately denied their right to attend meetings, nominate candidates, and participate in union decisions as well as their right to free assembly and expression protected by title I of the LMRDA.[70] The court concluded that it had no jurisdiction to hear the title IV claim, wherein the plaintiffs alleged that the "24 month rule" imposed unreasonable restrictions.[71] The district court acknowledged that title IV claims could be brought only by the procedure prescribed within that title and ruled that title IV claims could not be heard with title I claims.[72]

As for the claims asserting the denial of rights guaranteed by title I, the trial court agreed with the plaintiffs. It determined that title I established a remedy that can be used whenever violations of title I occur, regardless of the possible existence of title IV claims.[73] Accordingly, it invalidated the ongoing election and issued a preliminary injunction which established very specific procedures for a new election.[74]

The First Circuit affirmed the order of the district court.[75] It agreed that the district court had jurisdiction to hear title I claims during the ongoing election. It also agreed that the mere existence of title IV claims does not preclude a title I individual member suit whenever title I rights are violated.[76]

The court of appeals concentrated much of its opinion on the issue of whether the election was "concluded" at the time the action was brought.[77] The district court ordered that the mailed-in ballots remain unopened.[78] Based on that order the circuit court concluded that the election had not yet "concluded," and aggrieved members could, therefore, assert their title I claims requesting invalidation of the election.[79]

68. *Id.* at 626.
69. *Id.* at 617-18.
70. *Id.* at 626.
71. *Id.* at 622.
72. *Id.* (the district court reasoned that *Calhoon* precluded jurisdiction of title IV claims even when title I claims are sufficiently alleged).
73. *Id.* at 623.
74. *Id.* at 636-37.
75. Crowley v. Local No. 82, Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen and Packers, 679 F.2d 978 (1st Cir. 1982), *rev'd*, 104 S. Ct. 2557 (1984).
76. *Id.* at 989-90.
77. *Id.* at 991-94.
78. *Crowley*, 521 F. Supp. at 614.
79. *Crowley*, 679 F.2d at 993.

III. THE COURT'S OPINIONS

A. *Overview*

Relying on the exclusivity language in title IV[80] and the "appropriateness" language in title I[81], the majority held that the district court's invalidation of an ongoing election was "inappropriate" relief under title I.[82] In so doing, the majority seemingly broadened the application of the title IV remedy while limiting the private right of action under title I. Justice Stevens, the sole dissenter, believed that congressional intent shows a strong presumption for enforcing title I rights through private lawsuits by individual members, even when title IV claims are also at issue.[83]

B. *The Majority*

The majority opinion, delivered by Justice Brennan, began its analysis by reiterating its earlier holding in *Steelworkers v. Sadlowski*[84] that title I protections do in fact extend to union members during union elections.[85] After a short discussion on the legislative history of section 102 of title I[86], the Court then turned its focus to the language of that section. The Court emphasized the wording of the statute which entitles persons whose title I rights have been infringed only to relief which is appropriate under the circumstances[87] or to that which is appropriate to any given situation.[88]

The Court also reasoned that title I cannot be read in isolation from other sections of the LMRDA, particularly in light of the subject matter covered by title IV of the LMRDA.[89] Title IV establishes specific requirements for union elections[90] and provides its own procedure for enforcing these requirements.[91]

The important policy question remaining for the Court to address was exactly what title I remedies are available to union members while an election is being conducted?[92] Two certainties exist: title IV provides the exclusive remedy for challenging an election that already has been conducted[93], and, as stated earlier, union members are entitled to

80. LMRDA § 403, 29 U.S.C. § 483 (1982).
81. LMRDA § 102, 29 U.S.C. § 412 (1982).
82. *Crowley*, 104 S. Ct. at 2571.
83. *Id.* at 2575-76 (Stevens, J., dissenting).
84. 457 U.S. 102 (1982).
85. *Crowley*, 104 S. Ct. at 2564.
86. *Id.*
87. LMRDA § 102, 29 U.S.C. § 412 (1982).
88. *Crowley*, 104 S. Ct. at 2564 (citing Hall v. Cole, 412 U.S. 1, 10-11 (1973)).
89. 104 S. Ct. at 2565.
90. LMRDA § 401, 29 U.S.C. § 481 (1982).
91. LMRDA § 402, 29 U.S.C. § 482 (1982).
92. *Id.* at 2564. *See also id.* at 2566 (Court also notes that the "full panoply of Title I rights are available to individual union members 'prior to the conduct' of a union election").
93. LMRDA § 403, 29 U.S.C. § 483 (1982).

title I protections during the course of the election.[94] Given this context, the Court restated its position of *Wertz v. Bottle Blowers Association*[95], that construction of legislation requires a look into the intent and objectives of Congress.[96] The Court recognized that Congress apparently did not anticipate the potential for a protracted election process[97], but still gave great weight to the legislative intent placing responsibility for regulating union elections primarily with the Secretary of Labor.[98] Nothing in the legislative history of title I indicates an intent by Congress to permit individuals to preempt this authority to regulate elections granted exclusively to the Secretary of Labor.[99] In light of this history, the Court concluded that invalidation is not an appropriate remedy under a title I action.[100] Union members, therefore, may allege title I violations during elections only if the relief requested is "appropriate," that is, the plaintiffs are not requesting invalidation or supervision of the election by the courts.[101]

In summary, the majority ruled that title I actions may be brought during the course of an election requesting remedies short of invalidation, but if the relief sought is court invalidation and supervision, aggrieved members are required to pursue the remedy provided pursuant to title IV and may not use title I for such relief.[102] It should be noted that the Supreme Court spent little time discussing the issue of whether the election had concluded or was ongoing, the basis of the First Circuit's analysis.[103] This issue was not in any way ultimately dispositive of the case.

C. *The Dissent*

Justice Stevens cited *Hall v. Cole*[104] for the proposition that section 102 of title I was intended to make available a panoply of remedies.[105] He asserted that permitting individual members to seek only limited injunctive relief will allow union officials to commit serious violations of title I while members have no adequate remedy to correct the situation.[106] This result, according to Justice Stevens, is not consistent with the purpose of title I. Title I was enacted to promote union democracy.[107] The holding by the majority, he asserted, undermines this

94. 104 S. Ct. at 2566.
95. 389 U.S. 463, 468 (1968) (citing National Woodwork Manufacturers Association v. NLRB, 386 U.S. 612, 619 (1967)).
96. 104 S. Ct. at 2566.
97. 104 S. Ct. at 2567.
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.* at 2569.
102. *Id.* at 2571.
103. *See supra* notes 77-79 and accompanying text.
104. 412 U.S. 1 (1973).
105. 104 S. Ct. at 2572.
106. *Id.*
107. *Id.* (citing Steelworkers v. Sadlowski, 457 U.S. 102, 112 (1982)).

purpose.[108]

Section 402 of title IV, according to Justice Stevens, was introduced only to limit the remedies available from state courts.[109] He asserted that Congress did not intend that title I actions be limited by title IV, which was part of the bill before title I was introduced.[110] The legislative history reflects a concern over the relationship between federal and state remedies, not as between private and public enforcement.[111]

Justice Stevens stressed that title I was introduced subsequent to title IV. Title I was added because Congress felt that individuals must have the ability to enforce their rights through a private cause of action.[112] He quoted Senator Kuchel explaining his proposed amendment, adding a private cause of action to title I[113], after members of Congress expressed dissatisfaction with relying on the Secretary of Labor to enforce individual rights provided by title I.[114]

Justice Stevens distinguished *Calhoon*[115], on which the majority relied, by noting that in that case the Court simply held that title IV, not title I, regulates eligibility standards of union members running for elective office.[116] In the present case, individual union members stated claims which the Court conceded fell within title I. Justice Stevens asserted that the majority's view that section 403 of title IV limited the remedy under section 102 of title I "turns the statute and its legislative history on their head."[117] Concluding, Justice Stevens believed that the district court did not abuse its discretion by ordering a new election and that such relief was appropriate under the circumstances.[118]

IV. *CROWLEY*'S EFFECT

The Supreme Court's decision in *Crowley* does not necessarily invalidate the current holdings of the various circuit courts. The approaches taken by the circuits to resolve the title I-title IV overlap problem may, therefore, not be altered by this decision in any significant way. Indeed *Crowley* appears to do no more than add another factor for the courts to consider in overlap situations, and may, in some instances, make it easier for individual union members to obtain title I relief when title IV issues are also involved.

The *Crowley* opinion is the first among overlap cases basing its analysis on the "appropriateness" of the remedy being sought under section 102 of title I[119], rather than solely on the exclusivity language in section

108. *Id.* at 2573.
109. *Id.*
110. *Id.*
111. *Id.* at 2574 (citing Trbovich v. United Mine Workers, 404 U.S. 528 (1972)).
112. *Id.* (citing Finnegan v. Lieu, 456 U.S. 431, 440 n.10 (1982)).
113. *Id.* (quoting 105 CONG. REC. 6617, 6620 (1959)).
114. *Id.* at 2575.
115. Calhoon v. Harvey, 379 U.S. 134 (1964).
116. 104 S. Ct. at 2575 (citing *Calhoon*, 379 U.S. at 138).
117. *Id.* at 2575-76.
118. *Id.*
119. LMRDA § 102, 29 U.S.C. § 412 (1982).

403 of title IV.[120] The *Crowley* decision will not permit district courts to interrupt on ongoing election, but it will allow them to fine tune an election, so long as the relief sought is "appropriate."[121]

The majority in *Crowley* was justifiably convinced that Congress clearly intended to consolidate all challenges to elections in the Secretary of Labor.[122] Moreover, the Court implied that this is true even for elections which are not yet concluded.[123] The Court made it clear, however, that it does not wish to preclude title I relief during the course of an election.[124] The Court even provided an example of an abuse which may be redressed by a district court so long as the election is not delayed or invalidated by the relief requested.[125]

The legislative history reveals that the primary point of contention between the opposing points of view in Congress was the extent to which protection of members' rights may be infringed in order to permit the maximum amount of union independence.[126] Title I's "Bill of Rights" and the individual members standing-to-sue provision were added to the LMRDA in response to the concern over the lack of protection afforded union members under title IV.[127] Given this history, and what the Court said in *Crowley*, it can be assumed that a district court has great latitude in providing title I relief short of invalidation. This will protect member rights and concurrently prevent undue interference in union elections.

To comply with the relevant Supreme Court decisions, the lower federal courts must now be concerned with two tests in determining when title I jurisdiction is not available when title IV issues also are present. First, do the claims made by the plaintiffs constitute allegations which are in substance title IV claims?[128] Second, does the relief requested substantially delay an on-going election, require setting aside an election, or seek court supervision of a new election?[129] Aside from these restrictions on the scope of title I jurisdiction, the circuits still have primary responsibility for determining whether the title I relief sought is "appropriate" in a given case.

Crowley does not appear to substantially alter the *Schonfeld* exception, that is, the "articulated policy of suppression" requirement established by the Second Circuit.[130] Circuits following *Schonfeld*[131] will merely need to determine, in addition to whether there is an articulated

120. LMRDA § 403, 29 U.S.C. § 483 (1982).
121. *See Crowley*, 104 S. Ct. at 2568-69.
122. *Id.*
123. *Id.* at 2568.
124. *Id.* at 2568-69.
125. *Id.* at 2569.
126. Note, *Election Remedies Under the Labor-Management Reporting and Disclosure Act*, 78 HARV. L. REV. 1617, 1623 (1965).
127. *See supra* note 21 and accompanying text.
128. Thereby coming squarely under the analysis of Calhoon v. Harvey, 379 U.S. 134 (1964).
129. Thereby coming squarely under the holding of *Crowley*.
130. Schonfeld v. Penza, 477 F.2d at 899, 904 (2d Cir. 1973). *See also supra* notes 36-39 and accompanying text.

policy or history of suppression by the union leadership, the question of whether the title I relief sought is "appropriate."

Likewise, the Third Circuit approach applied in *DePew*[132] is still viable after *Crowley*. The Third Circuit, along with the Ninth Circuit,[133] grants title I jurisdiction so long as discrimination is shown in the nominating and voting of officers.[134] These circuits, according to their reading of *Calhoon*, first determine whether the violations constitute discrimination, thereby giving rise to title I claims.[135] If the violations, however, are challenges to eligibility rules, they are considered title IV claims.[136] Once again, *Crowley* has little effect, so long as individual union members request relief which is "appropriate."

The circuits wherein *Crowley* may make it easier for individual members to seek title I relief are those which seem to preclude title I relief whenever concurrent title IV claims exist.[137] *Crowley* makes it clear that title I relief may be granted in some cases involving title IV.[138] These circuits now will have to face the title I-title IV overlap problem that they avoided when they seemingly decided that title I relief was automatically precluded whenever title IV claims also exist.[139]

CONCLUSION

The Supreme Court in *Crowley* again has addressed the title I-title

131. *E.g.*, Driscoll v. International Union of Operating Engineers, Local 139, 484 F.2d 682, 687 (7th Cir. 1973).

132. Depew v. Edmiston, 386 F.2d 710 (3d Cir. 1967). *See supra* text accompanying notes 40-46.

133. *See* Kupau v. Yamamoto, 622 F.2d 449, 453 (9th Cir. 1980).

134. *Depew*, 386 F.2d at 712-13.

135. *Id.* at 712.

136. *Id.*

137. *E.g.*, McGuire v. Grand International Division of the Brotherhood of Locomotive Engineers, 426 F.2d 504 (6th Cir.1970); Driscoll v. International Union of Operating Engineers, Local 139, 484 F.2d 682 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974). *See also supra* notes 47-54 and accompanying text.

138. *Crowley*, 104 S. Ct. at 2564.

139. *Crowley* certainly will force a reevaluation in the Seventh Circuit. In *Driscoll*, 484 F.2d 682 (7th Cir. 1973), the Seventh Circuit considered a complaint challenging a union requirement that all candidates for union office sign a non-communist affidavit. The plaintiff, a potential candidate who refused to sign the affidavit, charged that this requirement violated his free speech rights. LMRDA § 101(a)(2), 29 U.S.C. § 411(a)(2) (1982). The court, giving *Calhoon* its strictest reading, stated that since plaintiff's "allegations 'basically relate' to eligibility and charge 'in substance' that he has been denied the right to run for office in his union, he is therefore stating a cause of action which can be enforced only under the provisions of Title IV. . . ." 484 F.2d at 686. Because the remedy in this instance involved only eliminating the affidavit requirement, and would not disrupt the election process, the Seventh Circuit's position, in light of *Crowley*, appears tenuous. As noted by the Court in *Crowley*,

> [t]he important congressional policies underlying enactment of Title I . . . compel us to conclude that appropriate relief under Title I may be awarded by a court while an election is being conducted. Individual union members may properly allege violations of Title I that are easily remediable under that title without substantially delaying or invalidating an ongoing election.

104 S. Ct. at 2568-69. Title I jurisdiction seems proper, in light of *Crowley*, because the plaintiff in *Driscoll* merely requested limited, nondisruptive review of the eligibility requirement, which clearly appears to have infringed upon the plaintiff's free speech rights protected by title I.

IV overlap problem. The Court chose not to establish uniform criteria for evaluating when title I relief can be sought, but merely added an additional factor to consider, whether the title I relief sought is "appropriate" under the circumstances. It can be assumed, therefore, that the Court is content to permit the various circuits to work out their own solutions. The Circuits can continue, for the most part, to rely on their own case law, although a few circuits may find themselves permitting more title I actions than they would have were it not for the Supreme Court's refusal to establish uniform criteria in the *Crowley* decision.

David E. Doran