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DEMOCRACY IN A ONE-PARTY STATE: PERSPECTIVES FROM LANDRUM-GRIFFIN*

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THE PROBLEM OF OLIGARCHY

Over seventy years ago, the German sociologist, Robert Michels, described what he termed "The Iron Law of Oligarchy."[1] He pointed out that even organizations, such as the Social Democrat Party and the Socialist trade unions, that were committed to democratic beliefs and actively working to extend democratic rights were themselves governed by "a closed caste"[2] of leaders or a "cartel"[3] and not by their members. Oligarchic control he declared, was an inevitable product of organization.

> It is organization which gives birth to the dominion of the elected over the electors, the mandataries over the mandators, of the delegates over the delegators. Who says organization, says oligarchy.[4]

Michels' conclusions concerning the possibility of achieving democracy within such organizations were bleakly pessimistic.

> The notion of the representation of popular interests, a notion to which the great majority of democrats . . . cleave with so much tenacity and confidence, is an illusion engendered by a false illumination, is an effect of mirage . . . .
>
> The formation of oligarchies within the various forms of democracy is the outcome of organic necessity, and consequently affects every organization, be it socialist or anarchist.[5]

Michels' Iron Law of Oligarchy became almost a truism among political scientists and sociologists who paraded cumulative examples of formally democratic organization which came under control of leader cartels. In the 1950's, three sociologists, Lipset, Trow and Coleman, set

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1. R. MICHELS, POLITICAL PARTIES; A SOCIOLOGICAL STUDY OF THE OLIGARCHICAL TENDENCIES OF MODERN DEMOCRACY (1949) (originally published in Germany in 1911).
2. *Id.* at 156.
3. *Id.* at 104.
4. *Id.* at 401.
5. *Id.* at 401-02.

about to study the deviant case of the International Typographical Union (I.T.U.) which had maintained a stable two party system for over fifty years, with regular turnovers in officers through contested elections.[6] Their purpose was to explain why this union, unlike other unions, seemed not bound by Michels' Iron Law and "to illuminate the processes that help maintain democracy in the great society by studying the processes of democracy in the small society of the I.T.U."[7]

The conclusions reached by the three authors in their book, *Union Democracy*, were as pessimistic as Michels'. The political system of the I.T.U. was a product of factors unique to the printing trades—the special sense of occupational community, the structure of the industry, and a fortuitous sequence of historical events. It was largely a product of chance, "likened to a series of successive outcomes of casting dice."[8] The authors concluded that the study of the I.T.U. "suggest[s] that the functional requirements for democracy cannot be met most of the time in most labor unions or other voluntary groups."[9]

> Our analysis of the factors related to democracy in the I.T.U. has pointed to conditions under which democracy may be institutionalized in large scale private governments. Basically, however, it does not offer many positive action suggestions for those who would seek consciously to manipulate the structure of such organizations so as to make the institutionalization of democratic procedures within them more probable.[10]

Three years after this study was published, Congress passed the Landrum-Griffin Act of 1959.[11] The central premise of the statute was that unions should be democratic and that the law should prescribe minimum standards of democratic process in the conduct of internal union affairs. Senator McClellan proclaimed, when introducing the Bill of Rights of Union Members, "I deem it appropriate that we insure by law internal democracy in unions and provide for proper protection of union members and their rights . . . ."[12]

The pessimism of Michels and the authors of Union Democracy might seem to make Landrum-Griffin an act of futility and any concern with its effectiveness the pursuit of a mirage. Oligarchy is inevitable; it

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6. S. LIPSET, M. TROW & J. COLEMAN, UNION DEMOCRACY; THE INTERNAL POLITICS OF THE INTERNATIONAL TYPOGRAPHICAL UNION (1956).

7. *Id.* at ix.

8. *Id.* at 395.

9. *Id.* at 403.

10. *Id.* at 404-05.

11. Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959, 29 U.S.C. §§ 401-531 (1976).

12. 105 CONG. REC. 6472 (1959).

is "the outcome of organic necessity" in large scale organizations. We can not by statute repeal the "Iron Law of Oligarchy."[13]

If our goal is ideal democracy, and we will accept nothing less, then we, indeed, must be pessimistic. Elected union leaders will continue to dominate the political structure and seek to create a monolithic bureaucracy which eliminates or immobilizes organized opposition in the name of efficiency and loyalty. The law cannot and does not mandate a two-party system, and there is no reason to hope that such a system will emerge. Unions will continue to be one-party states.

This inevitability presents our provocative problem. How do we provide for democracy in a one-party state? More specifically, what legal rules will protect and promote democratic processes in a union's one-party political structure? This is a problem with which we are little prepared to come to grips, for we have commonly equated democracy with a multi-party system.

Although freedom is more likely to flourish with multiple parties, the measure of democracy is not the number of parties but the degree of recognition of individual rights by the union and its responsiveness to its members. These values, no doubt, can be achieved in fuller measure and with less legal intervention in multi-party systems, but it is fruitless to hope that unions, with or without legal intervention, will establish such systems. We must proceed, therefore, on the premise that unions are, and will continue to be, one-party states. The real world question is how the law can achieve increased responsiveness to the members' desires within the union's one-party political system?

Asking the question obviously assumes that there are affirmative answers, that the law can be shaped to make the union's one-party system more responsive. The thesis here goes further. It asserts that Congress, in writing Landrum-Griffin, perhaps more intuitively than consciously, included provisions which loosened the grip of oligarchic control, and that the courts have implicitly or explicitly recognized that the statute must be interpreted so as to protect democratic rights within a one-party system. Beyond this, the thesis presented here is that if we see more clearly the sources and instruments of oligarchic control, we can identify those points at which legal intervention will enable union

13. For analysis of union political process using variations on Michels' theme, see generally A. CAREW, DEMOCRACY AND GOVERNMENT IN EUROPEAN TRADE UNIONS (1976); A. COOK, UNION DEMOCRACY: PRACTICE AND IDEAL; AN ANALYSIS OF FOUR LARGE LOCAL UNIONS (1963); M. DICKENSON, DEMOCRACY IN TRADE UNIONS (1982); J. EDELSTEIN & M. WARNER, COMPARATIVE UNION DEMOCRACY: ORGANIZATION AND OPPOSITION IN BRITISH AND AMERICAN UNIONS (1975). For more optimistic views as to the possibilities of escaping oligarchy, see generally J. BANKS, TRADE UNIONISM (1974); R. WILLEY, DEMOCRACY IN WEST GERMAN TRADE UNIONS (1971).

members to assert their rights effectively. We can then design legal rules which will reduce the domination of unions by incumbent officers, and make union policies and administration more responsive to the members' will.

The purpose of this article is not to make an exhaustive analysis of the statute or the cases, but only to suggest the importance and potential of this perspective in reading the statute and applying it to specific cases.

SOURCES AND INSTRUMENTS OF OLIGARCHY

Michels, in explaining why organizations constructed on a democratic model became undemocratic in their internal operation, identified a number of factors that led to domination by the leaders and enabled them to maintain control. Similarly, Lipset, Trow and Coleman, in explaining why the I.T.U. had not succumbed to oligarchic control, identified a number of ways in which the I.T.U. differed from other unions and further illuminated the sources and instruments of one-party control in unions. Four basic sources, emphasized in both studies, are of special relevance here.

First, opposition to union policies and union leaders is viewed as disloyalty. As Michels pointed out, the leaders and the supporting bureaucracy identify themselves with the organization, treating all criticism of the officers or their policies as an attack on the organization itself, undermining it in the face of its enemies.[14] This attitude is not limited to those with a lust for power. The greatest intolerance to criticism often comes from a profound and sincere conviction by the leadership that it is serving the best interests of the membership and that the great majority of members approve.[15]

The attitude that opposition constitutes disloyalty is often expressed in union constitutional provisions that subject members to discipline for "disloyalty," "undermining the union," "slandering union officers," organizing "factions" or "caucuses," or "discussing union business outside of union meetings." This attitude is commonly shared by many union members who are inculcated with narrow notions of loyalty and are untroubled by leadership control. The fact that the leaders are elected does not reduce, but reinforces, this attitude, for in the words of Michels:

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14. In Chapter III, entitled "Identification of the Party With The Leader ("Le Parti C'est Moi"), Michels states: "The bureaucrat identifies himself completely with the organization, confounding his own interests with its interests." R. MICHELS, *supra* note 1, at 228.

15. "The despotism of the leaders does not arise solely from a vulgar lust of power or from an uncontrolled egoism, but is often the outcome of a profound and sincere conviction of their own values and the services which they have rendered to the common cause." *Id.* at 229.

> Once elected, the chosen of the people can no longer be opposed in this way. He personifies the majority and all resistance to his will is anti-democratic . . . . It is reasonable and necessary that the adversaries of the government should be exterminated in the name of popular sovereignty . . . .[16]

Lipset, Trow, and Coleman emphasized that in the I.T.U., in contrast to other unions, organized internal opposition to the incumbent leadership was accepted as legitimate. The loyalty of the opposition was not questioned; opposition was accepted as right and proper, and opposition groups were to be lived with rather than destroyed.[17] This attitude inhibits acts of political hostility, permits open competition for control, and prevents the development of an entrenched bureaucracy. Legitimacy of opposition is fundamental to the stable democratic structure of the union.

The second source and instrument of oligarchy is control of the union's bureaucracy and its resources.[18] The leaders customarily are elected as a single slate, forming an unified administration sharing power in a compact of mutual promotion and self-preservation. Together, they control the patronage of highly prized positions of paid central administration bureaucrats—education, research, and political directors, editor of the union journal, and various division heads and field representatives, along with their supporting staffs. In addition, the administration can bestow a large number of prestigious, if unpaid, committee positions and special assignments. More important, the leaders can groom their successors and eliminate potential opposition through these appointments. Unquestioning loyalty and active support of the incumbent administration become the prime prerequisites of original appointment, permanence of position, and future advancement.[19] The power of appointment is supplemented by substantial control of union funds for creating new positions, determining salary levels, approving expense allowances, and allocating money to various activities.

The union leadership and bureaucracy becomes, in Michels' terms, a cartel or political machine, interdependent and intersupporting, devoted to perpetuating itself in power. This cartel is the political party of the one-party state.

The third source and instrument of oligarchic control is domination of the channels of communication.[20] Control over the union journal,

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16. *Id.* at 218.
17. S. LIPSET, *supra* note 6, at 249.
18. *Id.* at 9, 147-48, 182.
19. *Id.* at 230-33.
20. *Id.* at 9, 160-61, 266-68.

with its adulation of incumbent officers, unqualified support of their policies, and exclusion of effective presentation of other positions, is only the most obvious instrument. Educational conferences and training classes promote the administration's views with no provision for dissent. The incumbent officers, their appointees, and paid staff representatives have daily opportunities to carry the message to the members, whether that message is promoting the administration and its policies or denigrating any opposition. The administration not only has the names and addresses of all the members, but knows the leaders of subordinate units and how to reach them. Through its contacts, it can identify its supporters and potential opponents, mobilize the former and isolate the latter.

In contrast, opponents of the administration have no established channels of communication nor access to union funds to pay for newspapers, mailings, or leaflets. They may be denied access to membership lists and may even be unable to identify and to contact others who share their views so as to form an organized opposition.

Fourth, oligarchic control leads to and is reinforced by centralization of control. The incumbent officers seek to enlarge their functions, often in the name of increasing efficiency and strengthening the union to enable it to deal more effectively and rationally with employers. The effect is to increase the bureaucracy, which feeds on its own hunger. The larger the bureaucracy grows, the greater is its urge for self-preservation and its ability to fulfill that urge. Centralization is at the expense of subordinate units which lose their autonomy of finance and function. Leaders of subordinate units lose their independent power bases and their ability to challenge the central administration. The bureaucratic structure becomes monolithic, leaving little room for multiple centers of independent political power.

Both Michels and Lipset pointed out that the Iron Law is most strongly manifested in large complex organizations, such as national unions, districts, and multi-unit local unions.[21] Democracy often survives, and with continued vitality, in small units or even substantial single-plant locals. Where there is little or no bureaucracy, with few positions of patronage, and where there is a practical ability to communicate with other members, organized opposition occurs more regularly. By its frequency, opposition obtains a measure of legitimacy.

The four principle sources and instruments of oligarchy sketched above, which are common to large complex organizations, understate the control that those in power may be able to exercise over union mem-

21. R. MICHELS, *supra* note 1, at 32-35; S. LIPSET, *supra* note 6, at 14-15, 413.

bers who criticize incumbents or organize opposition. The most effective instrument in a union is control over the members' jobs. Grievances may be ignored, feebly pursued, or deliberately lost in arbitration. Joint councils, such as those in the Teamsters, become thinly cloaked instruments of control, and hiring halls can be used to reward the ruling oligarchy's friends and punish its enemies. These devices are available and most often effective at the local level, even in small locals, but they also may be used at the district or national level to control rebellious local groups.

This brief sketch of sources and instruments of oligarchy underlines what should be self-evident—different measures are required to achieve recognition of individual rights and responsiveness to members in a one-party system than in a two-party system. A Bill of Rights for Union Members must serve purposes beyond those of the United States Constitution and provide greater, or at least different, protection of individual rights from that of the first and fourteenth amendments. Union elections cannot be analogized to governmental elections; not only their basic character, but also their function and the significance of the vote are quite different. Most important, the law cannot be paralyzed by nominal neutrality between the incumbents in control and the opponents who challenge their control. The function of the law must be to loosen the grip of oligarchy so that those opposed to the incumbents can make their voices heard and the weight of their opposition felt. The law's dominant concern must be protecting the rights of the opposition and reducing the advantages of the incumbents in the political contest. The incumbents seldom need the aid of the courts; they are more than able to help themselves.

THE BILL OF RIGHTS IN A ONE-PARTY SYSTEM

Title I of Landrum-Griffin is captioned "Bill of Rights of Members of Labor Organizations."[22] By this choice of words, the statute declares that individual union members have basic rights within the union—rights which the law protects against encroachments by those in power. The second, and the most important right—"Freedom of Speech and Assembly"—declares:

> 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 candidates

22. Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959, 29 U.S.C. §§ 401-531 (1976).

> in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings . . . .[23]

The bare statement of these rights asserts, in most fundamental terms, the legitimacy of opposition; it is not the oligarchy but those who oppose the oligarchy who need and are entitled to legal protection. The law affirmatively protects the right to criticize union officers, to question union policies, to speak against administration candidates and proposals at union meetings, and to meet with other members and to organize opposition to those in control. This provision thereby repudiates one of the main sources of oligarchy and provides a base for the elementary prerequisite for union democracy.

This guarantee reaches beyond mere affirmance of the legitimacy of opposition, it reaches to counteract specific sources of oligarchic control. In *Farowitz v. Associated Musicians of Greater New York*,[24] the union expelled a member for distributing leaflets urging other members not to pay a union assessment that he claimed was illegal. The union argued that his expulsion did not violate the Freedom of Speech and Assembly clause because of the proviso to that clause which states:

> Provided that nothing herein shall be construed to impair the right of a labor organization 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]

The union trial board found that by continuing to urge nonpayment after the Executive Board had assured members the assessment was legal, the member had "sought to undermine the very existence of the Local."[26] The court of appeals, however, held that distribution of the leaflets was protected because the statute was intended "to prevent union officials from using their disciplinary powers to silence criticism and punish those who dare to question and complain."[27]

> [A] member having such good reasons as here to believe that the collection of taxes or dues runs afoul of the law has the right to call this to the attention of the membership and to urge that they refrain from paying such assessments.

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23. 29 U.S.C. § 411(a)(2).
24. 330 F.2d 999 (2d Cir. 1964).
25. 29 U.S.C. § 411(a)(2).
26. 330 F.2d at 1001 (quoting the Union Trial Board's decision).
27. *Id.* at 1002 (citing Salzhandler v. Caputo, 316 F.2d 445, 449 (1963)).

> . . . A member's responsibility to his union as an institution surely can not include any obligation to sit idly by while the union follows a course of conduct which he reasonably believes to be illegal because of what a court of law has stated.[28]

Protecting freedom of speech here loosens the grip of oligarchy in several respects. Those in control are prevented from obtaining a complete monopoly over the channels of communication by closing off the few channels available to the members, and members are able to question openly their officers' conduct of union affairs. More important, those who are dissatisfied can identify others who are also dissatisfied, can reinforce and encourage one another, and can take the first step toward coalescing an organized opposition. To serve these purposes, the right of individuals to speak out and to distribute literature must have much wider scope in a one-party system than in a two-party system, which provides competing channels of communication and a known resort for those of shared views.

The court in *Farowitz* not only affirmed the legitimacy of opposition but upheld the right to urge civil disobedience. Implicitly, the court recognized that the political processes of the union were controlled by the officers whose actions were being questioned, and that in such a one-party system, free speech must be given broader scope, even to urging disobedience, if those in control are to be made responsive.

Title I, in protecting the right to meet and assemble, both implements freedom of speech and shields the organizing of opposition. In *Kuebler v. Cleveland Lithographers*,[29] a group of union members dissatisfied with negotiations during a strike met to discuss how to get the strike settled. A committee was named to communicate their views to the union negotiating committee. After the strike was settled, the leader of the group was suspended and fined for attending a meeting "held for the purpose of undermining the Union Negotiating Committee."[30] The court set aside his conviction and enjoined the union from taking any steps to punish or retaliate against him.

> To permit a union to punish its members for meeting and discussing affairs of the union would be to deny the very purpose of the Bill of Rights provisions of the Act. It was concern for greater democracy within unions which originally prompted Congress to enact these provisions. . . . No democracy can

28. *Id.* at 1002.

29. 473 F.2d 359 (6th Cir. 1973).

30. *Id.* at 361 (quoting the charge of the Executive Board).

> flourish where freedom of speech and assembly are hindered by threat of reprisal . . . .[31]

The court protected the right of members to organize so as to give added weight to their expression of dissatisfaction even though this might weaken the union's resolve to continue a strike. Although the group was single purpose and transitory, its ability to take concerted action and to focus protest made its voice heard. Where cooperation and support of members is needed, as in a strike, the leaders may feel compelled to listen to such groups. If there are other submerged dissatisfactions, the single purpose group may not be transitory, for by forming an organized group it will attract those with other dissatisfactions, and the group may grow into a more broadly based opposition with which those in power must come to terms.

These statutory rights of freedom of speech and assembly may be likened to basic constitutional rights, but their legal protection must take into account that they are exercised within a one-party system. In *Salzhandler v. Caputo*,[32] a leader of an opposition group accused an incumbent officer of stealing union funds. He was charged with libeling a union officer, tried by a Trial Board consisting of other union officers, and barred from participating in union affairs for five years. The court voided the discipline, declaring:

> So far as union discipline is concerned Salzhandler had a right to speak his mind and spread his opinions regarding the union's officers, regardless of whether his statements were true or false.[33]

The court rejected the argument that there was a "public interest in promoting the monolithic character of unions in their dealings with employers" and found that "[t]he Congress has decided that it is in the public interest that unions be democratically governed and toward that end that discussions should be free and untrammeled."[34]

This policy of free expression, however, does not explain why defamation should go unpunished. The reason, as the court makes clear, is that the incumbent officers were an oligarchy and would protect each other from attacks by opposition groups. Because the judicial process was controlled by the oligarchy, it could not be trusted to adjudicate charges that one member of the oligarchy had been defamed:

> Freedom of expression would be stifled if those in power could claim that any charges against them were libelous and then

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31. *Id.* at 364.
32. 316 F.2d 445 (2d Cir.), *cert denied*, 375 U.S. 946 (1963).
33. *Id.* at 451.
34. *Id.*

> proceed to discipline those responsible on a finding that the charges were false . . . .
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> . . . It follows that although libelous statements may be made the basis of civil suit between those concerned, the union may not subject a member to any disciplinary action on a finding by its governing board that such statements are libelous.[35]

Thus, constitutionally unprotected speech is statutorily protected within the one-party system.

The special protection given to free speech in a one-party system is further illustrated by the courts' willingness to review the union's findings of fact in discipline cases. In *International Brotherhood of Boilermakers v. Hardeman*,[36] a member was expelled for physically assaulting a union business agent. The Supreme Court, in upholding the discipline, stated that the union's findings of guilt needed to be supported by only "some evidence" at the disciplinary hearing.[37] But, in *Vars v. International Brotherhood of Boilermakers*,[38] a union local president who had published statements critical of the international officers was charged with various offenses, including submitting false pay and expense claims. He was tried before a union hearing examiner and expelled. Although there was some evidence to support the charges of misuse of funds, the court reviewed the record and found the charges unsupported:

> If Section 101(5) [sic] is to provide any measure of protection for the individual union member who finds himself beseiged by the full power of the International Union, some review is necessary to protect such members from abuses. This is especially true in cases such as this where the hearing examiner is not an independent figure divorced from union controversies, but is an officer of the International Union.[39]

The court recognized that the underlying dispute was political and that Vars was confronting the union's oligarchy. Vars, like Salzhandler, needed special protection, both substantively and procedurally, to counteract characteristics of the one-party state.

Judicial application of the equal rights clause, of title I in referendum cases has demonstrated a subtle understanding of what may be required to protect the democratic processes within union political structures. In *Young v. Hayes*,[40] the officers of the Machinists union sub-

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35. *Id.*
36. 401 U.S. 233 (1971).
37. *Id.* at 245-46.
38. 320 F.2d 576 (2d Cir. 1963).
39. *Id.* at 578. The court's citation should be to 29 U.S.C. § 101(a)(5).
40. 195 F. Supp. 911 (D.D.C. 1961).

mitted 106 proposed changes in the union constitution to referendum vote. Forty-seven were described as "changes made mandatory through passage of the Landrum-Griffin Act"[41] and were to be voted as a unit. The court found that some of these were not mandatory, including ones which increased the power of the international and restricted the power of the local lodges and the rank and file. The court held that this grouping of amendments violated the "equal right . . . to vote . . . in referendums" guaranteed by the statute.[42] Although all members were treated equally, the court recognized that the officers' control over the form of the ballot gave them dominating influence over the outcome. In Orwellian terms, some members—the officers—were more equal than others. In the words of the court:

> [T]he right to vote extended in the Act is not a mere naked right to cast a ballot. Rather, the general tenor of the Act would seem to indicate that those who make up the management of the union may not submit amendments for referendum to the membership in any form they wish. Permitting a union to submit propositions to its membership in any form they wish might very well open up the way of usurpation of power by union management . . . .[43]

Other courts have held that the "equal right to vote" was denied, despite universal sufferage, when union officials seeking approval of affiliation with another union gave incomplete or misleading information as to the terms of the affiliation[44] and when officers who were submitting a proposed contract for ratification failed to tell members of changes in the seniority provisions.[45] The courts have also required the union to open the channels of communication by making available to those opposing the administration's proposal the membership list for the purpose of mailing their views to the union members.[46]

The "equal right to vote" has thus been applied by the courts, and properly so, to curb the administration's advantage inherent in a one-party system, and to increase the ability of those outside the oligarchy

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41. *Id.* at 913.

42. *Id.* at 917.

43. *Id.* at 916.

44. Blanchard v. Johnson, 388 F. Supp. 208 (N.D. Ohio 1975), *modified*, 532 F.2d 1074 (6th Cir.), *cert. denied*, 429 U.S. 869 (1976).

45. Christopher v. Safeway Stores, Inc., 644 F.2d 467 (5th Cir. 1981).

46. Sheldon v. O'Callaghan, 497 F.2d 1276 (2d Cir.), *cert. denied*, 419 U.S. 1090 (1974). The court declined to decide whether the dissenting local was entitled to direct access to the list. Instead, the court required the union to turn over the membership list to a mailing service that was chosen by the union so that the dissenting members could communicate with the rank-and-file. *Id.* at 1282-83.

and opposing it to make their votes count.[47] Full equality between the administration and the opposition may not be achieved; but the iron grip of oligarchy is loosened, and the democratic process is strengthened.

ELECTIONS IN A ONE-PARTY STATE

Freedom of speech and assembly are essential instruments for the formation and development of an organized opposition that can make union elections meaningful. Criticism of incumbent officers or current policies by a solitary member or small groups serves as a flag around which others who are discontented or persuaded may rally. Dissatisfied members are no longer isolated but can identify others with whom they may join. As the group grows it gains resources and can speak and organize more effectively to reach even more members. If the incumbent officers are corrupt, ineffective, or unresponsive to the members, so that dissatisfaction is widespread, the group may grow until its opposition takes the form of challenging the incumbents in an election.

One might say that such a union has a two-party system, but this would portray the wrong picture. The opposition group has no stable organizational structure, no officers or staff, no patronage, no established channels of communications, and little resources. At best, it is a loose coalition coalescing discontent. In contrast, the incumbents control the organizational structure of the union, dominate its bureaucracy, control the channels of communication, have an apparatus of appointed officials, business agents, field representatives and staff, and have established alliances with elected officers at other levels of the union. The administration party consists of the union's incumbent officers and its bureaucratic hierarchy.[48] In practical terms, the union is the party. It is more than symbolic that the opposition will assume a title such as the "Rank and File," "Dues Protest Movement," or "Miners for Democracy," while the incumbents need no name other than that of the union.

The enormous advantages of the incumbents obviously discourage potential challengers, and many union elections, particularly at the national level and in districts and large multi-unit locals, go uncontested. In contested elections the challengers seldom have a realistic chance of winning, and the number of victories is small. Union elections, in fact,

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47. *See, e.g.*, Navarro v. Gannon, 385 F.2d 512 (2d Cir. 1967), *cert. denied*, 390 U.S. 989 (1968); Bunz v. MPMO Protective Union, Local 224, 567 F.2d 1117 (D.C. Cir. 1977); Pignotti v. Local 3, Sheet Metal Workers, 343 F. Supp. 236 (D. Neb. 1972), *aff'd*, 477 F.2d 825 (8th Cir.), *cert. denied*, 414 U.S. 1067 (1973).

48. For a description of the disadvantages under which opposition candidates work, see generally James, *Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections*, 13 HARV. C.R.-C.L. L. REV. 247 (1978).

rarely result in a change of union leadership. What purpose, then, do union elections serve in providing democracy in unions?

First, although challengers seldom win, they do not always lose. Incumbents are, from time to time, unseated. Each time an incumbent is unseated officers of other unions are reminded that they are not invulnerable; the improbable can and does happen. This makes them sensitive to criticism, and if they are prevented from silencing their critics, they may feel the need to mend their ways lest expressed discontent coalesce into a dislodging opposition. Even an occasional unseating keeps other officers aware that they can not afford to be indifferent to the needs and desires of their members; responsiveness is encouraged by the desire for self-preservation.

Second, most union leaders are motivated to be responsive to the members less out of fear that they will be unseated than by an inner desire to serve their members. They genuinely believe, or persuade themselves, that they are doing what is best for their members and that the members appreciate it. Even when they misuse their positions they believe that it is for the good of the members, or at least that the members would approve. They want to be loved and believe that they are loved. This belief is encouraged by the sycophantic bureaucracy and the lack of organized opposition, which gives a false aura of universal content—except for "a few screwball malcontents."

When an election is contested, the election campaign provides the occasion for extensive debate of the officers' stewardship. Their personal conduct is evaluated, their administrative abilities and integrity are examined, and their policies are debated. Submerged discontents surface and are articulated. The incumbents are pressed to explain their conduct and to justify their policies. The election campaign is the period when the democratic process of debate has greatest vitality, even though in that debate the incumbents have all of the advantages.

At the end of the campaign, when the votes are counted, the tabulation does more than decide the winner. Although the incumbent wins, the tabulation measures the level of discontent among the members. If one third of the members vote for the insurgents in spite of the advantages favoring the incumbents, this signals a level of dissatisfaction far beyond what the officers believed to exist or want to continue. Practices and policies may be modified to meet the criticism and lower the level of discontent. Although the incumbent oligarchy stays in power, it becomes responsive to the election returns. The greater the opposition vote, the greater the responsiveness.

Third, the measure of discontent may have a more important delayed reaction. The oligarchy is not always a flawless monolith; fre-

quently, those in the second or lower ranks of the hierarchy are ambitious and not content to wait for promotion from within. If they saw a chance of success, they would be willing to challenge the top officers. When an opposition, led by a person without personal standing or a substantial political base, obtains a one-third vote, some of those within the oligarchy may see a brighter future as leaders of the opposition. In a subsequent election they may become the challengers, rather than the supporters of the incumbents. The monolith is thereby fractured. Because those who were part of the heirarchy have political skills, political allies, and perhaps name identification, they may have a good chance of unseating the incumbents. Significantly, in most cases when an incumbent is ousted, the challenger is one of the oligarchy and is supported by others within the oligarchy. It is the realization by the top officers that they have around them some who would take advantage of discontent to displace them that increases their sensitivity to the needs and desires of the members.

The central point is that the usefulness of union elections is not measured solely by the frequency with which the incumbents are unseated, although the more often this happens the more responsive union officers will be. The usefulness of elections lies rather in the frequency with which they are contested and the fullness and accuracy with which they measure the level of discontent. Their usefulness is increased by enabling or encouraging those who can make the best showing to be opposition candidates. This leads to the question of what does the law, or what can the law, do to increase the usefulness of union elections in these terms?

Title IV of Landrum-Griffin, in regulating union elections, strikes at one of the basic roots of oligarchy.[49] By requiring unions to hold periodic elections it declares in unequivocal terms the legitimacy of opposition. More than that it presupposes organized opposition and provides that opposition an opportunity to articulate dissatisfactions, to debate union policies, and possibly to displace the incumbent oligarchs. The statute expressly guarantees every member the right to be a candidate, subject to "reasonable qualifications uniformly imposed," and the right to support the candidate "of his choice, without being subject to penalty, discipline, or improper interference or reprisal."[50]

Beyond legitimating opposition, the statute includes specific provisions designed to curb some of the advantages of the incumbents in the

49. Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959 § 401-03, 29 U.S.C. § 481-83 (1975).

50. *Id.* at § 481(e).

election. Title IV opens channels of communication by obligating the incumbent officers "to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing." Equal access is provided by further requiring the incumbents "to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members and . . . distribution . . . of campaign literature" at union expense.[51]

The advantages of the incumbents are further curbed by section 401(g),[52] which prohibits the use of any union funds to support or promote any candidate. This bars the use of any union resources on behalf of an incumbent. Thus, the Ninth Circuit has held that the use of a union's mimeograph machine to print campaign leaflets violates this section and requires that the election be invalidated.[53] The Secretary of Labor has declared in an interpretive bulletin:

> [O]fficers and employees may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationery, etc., to assist them in such campaigning.[54]

The reach of provisions to limit the advantages of the incumbents was illustrated when Yablonski, a member of the Executive Board of the Mine Workers, challenged the incumbent president, Boyle. As soon as Yablonski announced his intention to run, Boyle and his supporters on the Executive Board removed Yablonski from his position as head of the lobbying department. The court enjoined his removal as an act of reprisal.[55] When Yablonski requested that campaign literature be mailed out, the secretary-treasurer refused on the grounds that he was not a candidate because he had not yet been nominated by the required number of local unions. The court ordered the mailing, saying that he was a candidate within the meaning of the statute when he declared his intention to run and that he needed to send out campaign literature to win nominations by local unions.[56] During a three month period, the union journal had 166 references to and 16 pictures of Boyle, reporting favorably on his activities on behalf of the members, but made no men-

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51. *Id.* at § 481(c).

52. *Id.* at § 481(g).

53. Shultz v. Local 6799, United Steelworkers, 426 F.2d 969, 972-73 (1970), *aff'd sub. nom.* Hodgson v. Local 6799, United Steelworkers, 403 U.S. 333 (1971). *See also* Brennan v. Local 300, Laborer's Int'l Union, 85 L.R.R.M. 2648 (C.D. Cal. 1974); Brennan v. Sindicato Empleados, 370 F. Supp. 872 (D.P.R. 1974); Usery v. Stoveworkers Int'l Union, 547 F.2d 1043 (8th Cir. 1977).

54. Office of Labor-Management Standards Enforcement, 29 C.F.R. § 452.76 (1983).

55. Yablonski v. UMW, 71 L.R.R.M. 3041 (D.D.C. 1969).

56. Yablonski v. UMW, 71 L.R.R.M. 2606 (D.D.C. 1969).

tion of Yablonski's efforts to obtain favorable legislation. The court held that this use of the journal constituted discriminatory use of the membership list, enjoined further discrimination, and ordered the union to distribute to all members a copy of the court's findings and order.[57] During the campaign period Boyle gave staff employees a retroactive pay increase and then demanded contributions from them for his campaign fund. After Boyle won the election, the Secretary of Labor brought suit to set it aside. Two of the principal grounds were the use of the union journal and the contributions by paid staff employees. These constituted use of union funds to promote Boyle's candidacy.[58]

This is not to suggest that the statute removes all advantages of the incumbents; the statute, at most, reduces that advantage, and it reduces the advantage less than it might. For example, a candidate has no right to a list of the names and addresses of members but is entitled only to inspect such a list once within 30 days prior to the election.[59] A challenger may thereby be unable to make personal contact with members, particularly when they are widely scattered. The incumbents in fact have access to the list; during their period of office they have opportunities for widespread contact; and the paid staff have regular personal contact, both before and during the campaign.

The courts have gone beyond the bare words of the statute in recognizing that if the statute is to serve its purpose the words should be interpreted to provide the special safeguards needed to counteract the union's oligarchic control. In *Wirtz v. Local 6, Hotel Employees*,[60] the union required that to be eligible for major elective offices, a candidate must have held an elective office or been a member of the Assembly, a representative body. The justification for this rule was that the union had 27,000 members and controlled assets of over $32 million. It was important to have top officers who were experienced and have demonstrated their ability. The Supreme Court was not persuaded and held that this qualification was not reasonable. The Court pointed out that in practice to get elected to the Assembly a member had to run on the administration slate. In addition, vacancies to offices and Assembly seats were filled by appointment by the Executive Board.

> 'This enables the incumbent group to qualify members for elective office by a procedure not available to dissidents.'
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> Control by incumbents through devices which operate in

57. Yablonski v. UMW, 305 F. Supp. 868, 875-76 (D.D.C. 1969).
58. Hodgson v. UMW, 344 F. Supp. 17 (D.D.C. 1972).
59. 29 U.S.C. § 481(c).
60. 391 U.S. 492 (1968).

> the manner of this by-law is precisely what Congress legislated against in the LMRDA.[61]

Similarly, in *Donovan v. Laborers Local 120*,[62] the court invalidated a union procedure for disqualifying candidates who were not "competent to perform the duties of the office." Competency was to be determined by three Election Judges appointed by the Local Executive Board. The potential of control and distortion of the election process were obvious to the court, which stated:

> When so much discretion is placed in the hands of those chosen by the incumbents, the possibilities of abuse are clear, and free and democratic elections are threatened.[63]

The Supreme Court has recognized and given determinative weight to much less obvious problems confronting oppostion groups in a one-party system. In *Local 3489, Steelworkers v. Usery*,[64] the union required that a candidate, to be eligible, must have attended at least one half of the local union meetings in the last three years. The union justified this requirement on the grounds that it encouraged attendance at meetings and assured that those elected had demonstrated a sustained interest and familiarity with union affairs. Again, the Court was not persuaded. The rule had the effect of disqualifying 96.5% of the members and was not consistent with the goal of free and democratic elections. To the union's argument that any member who wanted to run for office could qualify by attending eighteen meetings over a three year period, the Court responded in terms recognizing the transitory nature of opposition groups in a one-party state:

> In the absence of a permanent "opposition party" within the union, opposition to the incumbent leadership is likely to emerge in response to particular issues at different times, and member interest in changing union leadership is therefore likely to be at its highest only shortly before elections. Thus it is probable that to require a member to decide upon a potential candidacy at least 18 months in advance of an election when no issues exist to prompt that decision may not foster but discourage candidacies and to that extent impair the general membership's freedom to oust incumbents in favor of new leadership.[65]

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61. *Id.* at 504-05 (quoting the district court's opinion 265 F. Supp. 510, 520) (citations omitted).

62. 683 F.2d 1095 (7th Cir. 1982).

63. *Id.* at 1104.

64. 429 U.S. 305 (1977).

65. *Id.* at 310-11.

And in *Wirtz v. Local 153, Glass Bottle Blowers*,[66] the Supreme Court explicitly recognized the advantages which incumbents gain by holding office. The Secretary of Labor brought suit to set aside an election because candidates had been disqualified by a meeting attendance rule. While the case was on appeal in the court of appeals, the union held its next regular election, and the court of appeals thereupon mooted the case. The Supreme Court reversed, holding that the intervention of a subsequent unsupervised election could not wash away the unlawfulness infecting a challenged election because those who won in the tainted election would, by reason of holding the office, have an advantage in the subsequent election. It was, said the Court,

> Congress's evident conclusion that only a supervised election could offer assurance that the officers who achieved office as beneficiaries of violations of the Act would not by some means perpetuate their unlawful control in the succeeding election. That conclusion was reached in light of the abuses surfaced by the extensive congressional inquiry showing how incumbents' use of their inherent advantages over potential rank and file challengers established and perpetuated dynastic control of some unions . . . .
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> . . . Congress, when it settled on the remedy of a supervised election, considered the risk of incumbents' influence to be substantial, not a mere suspicion.[67]

Lower courts have recognized other special problems of those challenging incumbents in union elections. An insurgent candidate in a large local requested the names and addresses of the 125 employers with whom the union had contracts so he could distribute literature at each location. When the union refused, the court read section 104[68] expansively, holding that his right to inspect collective agreements under section 104 was intended to give "the rank and file access to information about union affairs."[69] Section 104, which ostensibly gave the member a right to know the content of his collective agreement, was used by the court to open up channels of communication for an opposition candidate.

In another case, a local union changed the election from a meeting to a mail vote and five days later sent out ballots urging members to vote immediately. The court invalidated the election, noting that the

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66. 389 U.S. 463 (1968).

67. *Id.* at 474.

68. 29 U.S.C. § 414 (1975).

69. Colpo v. General Teamsters Union Local Union 326, 512 F. Supp. 1093, 1095 (D. Del. 1981).

change severely hampered the challengers because their views were relatively unknown to the members, while the incumbents' policies were well known.[70] Nominally equal access to the members was not enough. The opposition must be guaranteed an opportunity to get campaign literature into the hands of members before they vote in order to offset the advantage of the incumbents.

In a bizarre case, a district and circuit court demonstrated an understanding of the underlying problem, as contrasted with the Department of Labor's woodenness. Incumbent officers who lost an election challenged it on the grounds that secrecy of the ballot had not been preserved and that ballots had been destroyed—the incumbents, knowing that they were going to lose, had committed the violations themselves. The Secretary of Labor brought suit to set aside the election, reasoning that there were admitted violations which "may have affected the outcome" and that section 402[71] required him to bring suit.[72] The court looked beyond the bare words of the statute and dismissed the suit. The vice which the statute was to correct, said the court, was the use by union officers of the "power of their offices to emasculate challenges to their leadership by the rank and file, and thereby perpetuate dynastic control."[73] The statute should be read and applied to correct the vice of dynastic control, not to perpetuate it.

In a less explicit way, the Supreme Court has served the special purpose of union elections for measuring the level of discontent. In *Local 6*,[74] the Court held that the unreasonable eligibility rules "may have effected the outcome of the election" although the opposition had pulled only fifteen percent of the vote, none of the disqualified nominees was a proven vote-getter, there was no substantial election issue, and the incumbents had the overwhelming advantage of a full slate. The Court declared, contrary to any realistic evaluation, that this did not "necessarily contradict the logical inference that some or all of the disqualified candidates might have been elected had they been permitted to run."[75] Using this "logical inference," the Court ordered a rerun. The rerun did not provide the opposition with any realistic opportunity of winning, but it did provide for a more reliable reading of the level of discontent. Following the logic of *Local 6*, the Secretary of Labor and the courts

70. Marshall v. Local 468, Int'l Bhd. of Teamsters, 643 F.2d 575 (9th Cir. 1981).

71. 29 U.S.C. § 482(b) (1975).

72. Marshall v. Local 1010, United Steelworkers, 498 F. Supp. 368, 378 (N.D. Ohio 1980), *aff'd*, 664 F.2d 144 (7th Cir. 1981).

73. *Id.*

74. 391 U.S. 492 (1968).

75. *Id.* at 508.

have taken the position that any violation which has a potentially general impact on the vote, such as use of union funds,[76] refusal to send out literature,[77] or interference with campaigning will invalidate the election even though no reasonable estimate of its effect would justify a conclusion that it provided the margin of victory. Only if the violation mathematically could not have affected votes equal to the margin of victory will the election be upheld. As a result, the practical value of many rerun elections is to obtain a more accurate measure of discontent and the strength of the opposition.

Explicit recognition that an important function of union elections is to measure discontent would give the statutory words, "may have affected the outcome," a different meaning. A re-elected incumbent's response will be quite different if the opposition polls thirty-five percent of the vote instead of twenty percent. If the violation significantly reduces the opposition's vote, then it affects the impact or "outcome" of the election even though the opposition would have lost in any event. In such a case, the purpose of the election can be fully served only by a rerun which will more reliably measure the level of discontent. Neither the Secretary of Labor nor the courts, however, has yet been willing to read the word "outcome" in the context of an election in a one-party system, but instead have read it in the prosaic context of a two-party election, in which the contestants have relatively equal chances of winning.

Congress, in its design of title IV, pointed to some of the protections needed to have democratic elections in a one-party system, and the courts have explicitly recognized some of the devices of dynastic control. The oligarchy, however, inevitably retains great advantages in mounting election campaigns. The union newspapers cannot be used during the election period, but in the period between elections the incumbents have a press monopoly. The newspaper must maintain a pretense of neutrality during the weeks immediately before an election, but it can be, and is, used to praise the officers and their policies in the years between elections. Paid employees cannot campaign on working time except, in the words of the Secretary of Labor, "campaigning incidental to union business."[78] For staff representatives or business agents who are in constant contact with members, "incidental" campaigning may be pervasive, and because their function is to handle grievances, negotiate agreements, and otherwise be of service to the members, their campaign-

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76. Shultz v. Local 6799, United Steelworkers, 426 F.2d 969 (9th Cir. 1970), *aff'd sub. nom.* Hodgson v. Local 6799, United Steelworkers, 403 U.S. 333 (1971); Usery v. Stove Workers, 547 F.2d 1043 (8th Cir. 1977).

77. Wirtz v. American Guild of Variety Artists, 267 F. Supp. 527 (S.D.N.Y. 1967).

78. 29 C.F.R. 452.76 (1983).

ing is particularly effective. Many of the paid staff normally work long and irregular hours. If they do not campaign during the nine to five forty-hour week, they will still have many working hours left in which to campaign. There is no limitation on campaigning by those who have been given unpaid, but much sought after, committee assignments or other prestigious positions.

Beyond these nearly overwhelming organizational advantages, the incumbents have equally overwhelming advantages in raising funds to conduct the campaign. The paid staff is asked to contribute generously, and they understand that their salary is paid with a lien for generous amounts. Few union leaders are as clumsy as "Tony" Boyle, waiting until the election contest arrives and then granting increases and requiring return contributions. The campaign chest is filled with annual contributions between elections and supplemented with special "gifts" at election time.

Opposition groups have no remotely comparable organization or source of funds. Even if the administration is fractured and the opposition is headed by one of the officers, he may have control of little or no patronage. In most national unions, the paid staff representatives are appointed by the president, although they may be assigned to and work under regional directors or other officers, and the accumulated campaign chest is controlled by the president. Opposition candidates must seek financial support largely from working members or from friends outside the union.

A court's failure to keep in the forefront of their considerations the inherent and overwhelming advantages of incumbents can defeat the purpose of title IV. Three recent cases dramatically, and disastrously, illustrate how such a failure can turn the statute upside down. In *Marshall v. Teamster Local 20*,[79] an insurgent candidate in a large scattered local union obtained loans and gifts from his family doctor, the owner of a bar, his brother, and various friends. When the insurgent won, the Secretary of Labor brought suit to invalidate the election on the grounds that he had received contributions from "employers" in violation of section 401(g).[80] Some of those who had contributed technically fit the definition of "employer" because they had employees, although they had no business dealings with the union. Upon the Department of Labor's urging, the court refused to consider the realities of union elections and read the statutory words with blind literalness and with no recognition of the problem involved.

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79. 611 F.2d 645 (6th Cir. 1979).
80. 29 U.S.C. § 481(g).

The one-party structure of the union requires that the use of union funds be strictly prohibited, but the incumbent's great advantage in raising funds within the union requires that contributions from other sources not be restricted in the absence of compelling need. Employers with whom the union bargains should, of course, be barred from contributing to a candidate; the potential for favoritism, extortion, or corruption is obvious. But barring contributions from everyone who has a nurse, secretary, or housemaid as an employee cuts off the principal, though meager, source of funds available to a challenger and serves only to increase the relative advantage of incumbents.

The Supreme Court gave the screw an extra twist in *United Steelworkers v. Sadlowski*.[81] In 1977, Sadlowski mounted a substantial challenge to McBride, the administration's candidate for president of the Steelworkers. McBride raised more than eighty-five percent of his campaign funds by contributions from union staff employees. Sadlowski, lacking these resources, obtained substantial contributions from sympathetic individuals and organizations outside the union, none of whom had any actual or potential bargining relations with the union. After McBride won, the union constitution was amended, on the instigation of the officers, to prohibit any candidate from soliciting or accepting "financial support or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any nonmember."[82]

The Supreme Court held that this "outsider" rule did not violate the union member's freedom of speech and assembly but was a reasonable restriction on those rights. The Court admitted that this weakened the ability of members "to criticize union policies and to mount effective challenges to union leadership," but unrealistically speculated that "the impact may not be substantial."[83] The Court comforted itself with the empty assertion that "the rank and file probably can provide support, citing one instance of a challenger who was able to raise money within the union.[84] The Court, in a puzzling lapse of memory, forgot "the extensive congressional inquiry showing how incumbents' use of their inherent advantages over potential rank-and-file challengers established and perpetuated dynastic control of some unions,"[85] which had earlier led it to recognize the need for special protection of the opposition.

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81. 457 U.S. 102 (1982).

82. UNITED STEELWORKERS OF AMERICA CONST. art. V, § 27.

83. 457 U.S. at 113.

84. *Id.* at 113-14.

85. Wirtz v. Bottle Blowers Ass'n, 389 U.S. 463, 474 (1968), (citing S. REP. NO. 1417, 85th Cong. 2nd Sess. (1958)).

In a one-party system, elections are seldom contested and the incumbents are even more seldom unseated. The fact that on rare occasions challengers may be able to raise enough money within the union to mount a campaign does not disprove the need for outside sources of funds if elections are to serve their functions of keeping officers responsive and of adequately measuring the level of discontent. To serve the statutory purpose, election contests must be frequent and effective, and this requires that potential challengers have at least the hope of mounting credible campaigns. In a one-party system, the opposition is inevitably discouraged by its inherent disadvantage, and without legal support cannot provide a fully effective democratic process. The purpose of the statute requires that challengers be encouraged, not discouraged; that the ability to oppose be affirmatively reinforced rather than be weakened; and that the election contest be equalized instead of made more unbalanced.

The court of appeals, in *Sadlowski*,[86] analogized free speech rights under the statute to free speech under the first amendment. Following the reasoning of *Buckley v. Valeo*,[87] the court held that rules preventing candidates from amassing the resources for effective advocacy violated the statute. The Supreme Court responded that section 101(a)(2)[88] should not "be read as incorporating the entire body of first amendment law" and that union rules restricting free speech were valid "so long as they are reasonable; they need not pass the stringent tests applied in the first amendment context."[89] This reverses reality. Free speech needs even wider scope in a one-party state than in a two-party system because there is no free press and no established opposing party to criticize those in power. Restrictions imposed by a one-party system must be even more strictly scrutinized and stringently tested, for those in power are less tolerant of criticism and less subject to political check. Curbs by a ruling oligarchy on those who would challenge their control are entitled to less deference than restrictions adopted by a two-party legislature. The purpose of the statute was to loosen the iron grip of oligarchy, not tighten its stranglehold.

The failure of the Court in *Sadlowski* to recognize how incumbents use their inherent advantages to establish and perpetuate dynastic control is matched by the thinness of its opinion in *Finnegan v. Leu*.[90] When an opposition candidate in a large Teamster local defeated the incum-

86. 645 F.2d 1114, 1120-25 (1981).
87. 424 U.S. 1 (1976).
88. 29 U.S.C. § 411(a)(2).
89. 457 U.S. at 109, 111.
90. 456 U.S. 431 (1982).

bent, one of his first official acts was to discharge all business agents who had supported the incumbent. The Court held that this did not infringe the business agents' free speech as they had alleged "only an *indirect* interference with their membership rights, maintaining that they were forced to 'choos[e] between their rights of free expression . . . and their jobs.' "[91] In a more lucid moment, the Court would have recognized that Congress, in seeking to make unions democratic, did not intend to allow a ruling oligarchy to force such a choice on union members.

Again, with seeming absent-mindedness as to how it had interpreted the statute to counteract oligarchic control, the Court declared:

> Indeed, neither the language nor the legislative history of the Act suggests that it was intended even to address the issue of union patronage.
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> . . .Nothing in the Act evinces a congressional intent to alter the traditional pattern which would permit a union president under these circumstances to appoint agents of his choice to carry out his policies.[92]

Patronage is one of the chief instruments for creating and maintaining the one-party system. It provides the incumbents rewards for supporters, creates a corps of motivated campaign workers, and provides the principal source of campaign funds. The dangers of patronage to the democratic process, even in a two-party system, have been recognized by the Hatch Act[93] and Supreme Court decisions limiting the discharge of public employees because of their political affiliation or activities. The intent of Congress was to protect and to promote the democratic process in unions; fulfilling that intention within the union's one-party system requires protecting union employees even more than public employees from discrimination because of the exercise of democratic rights. By its passage of the statute, Congress evinced an intent to alter many traditional patterns that had helped produce union oligarchy. Coerced political loyalty of paid staff is well within the range of that congressional intent.

The common flaw in these three cases is that instead of decreasing the advantages of incumbents in union elections, the decisions increased the advantages. This is a perversion of Congressional intent. The declared and unquestioned purpose of Congress was to ensure fair and democratic elections. Congress recognized that one of the major obsta-

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91. *Id.* at 440 (emphasis is in original) (quoting Retail Clerks Union Local 648 v. Retail Clerks It'l Ass'n, 299 F. Supp. 1012, 1021 (D.C. 1969)).

92. *Id.* at 441 (footnote omitted).

93. *See* 5 U.S.C. § 7324 (1982).

cles to meaningful elections was the inherent advantage of incumbents and it sought to curb the advantage. The Court, in a series of cases, has articulated this Congressional purpose and has interpreted the statute to reach devices which perpetuated oligarchic control. The aberrant cases, by their conspicuous blindness, underline the importance of keeping clearly in view the special protections needed for insuring a measure of democracy in a one-party system.

CONCLUSION

There is neither time nor need here to explore the problems and potentials of other titles of the Act. It is enough to say that they do serve, in one measure or another, to loosen at least a little the iron grip of oligarchy. Section 201(c), for example, loosens the monopoly of information allowing the opposition to learn something of the conduct of union affairs, information which will increase their ability to criticize the performance of those in power.[94] Title III, by limiting trusteeships, helps preserve a measure of local autonomy, permitting the development of scattered centers of political strength potentially capable of challenging the central hierarchy.[95] Title V, by imposing fiduciary duties, enables individuals and groups who are politically helpless to use the courts to hold the ruling oligarch to a measure of responsibility.[96] Successful court actions, in turn, may provide the spark and fuel for developing an organized opposition.

My purpose here is not to elaborate on the multitude of points at which the statute could and should be construed to meet the special needs for providing democracy in a one-party system. My limited purpose is to illustrate by a few examples how the statute has been or could be read to achieve that end. The basic premise, which ought not need repeating, is that the congressional intent can be fulfilled only by explicitly recognizing that unions are one-party bureaucracies. Achieving some measure of democratic responsiveness requires that the legal rules encourage and specially protect opposition groups and curb the instruments of advantage and control by which incumbents frustrate opposition and forestall effective political challenges. The law can never achieve the open democratic process which comes with a two-party system, but it can, properly focused, significantly increase the responsiveness of leaders in a one-party system.

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94. 29 U.S.C. § 431(c). "Every labor organization required to submit a report under this subchapter shall make available the information required to be contained in such report to all its members . . . ." *Id.*

95. 29 U.S.C. § 461-66.

96. 29 U.S.C. § 501(b).