Protecting Democracy Within Unions: The Case for a Meaningful Vote Under Title I of the LMRDA

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ABSTRACT: In 1959, Congress passed the Labor–Management Reporting and Disclosure Act ("LMRDA"). Title I of the LMRDA guarantees union members equal rights to vote in union elections and referendums. The Supreme Court case Calhoon v. Harvey *interpreted voting rights under Title I to protect union members only from discrimination. Subsequently, federal courts diverged over how exactly to apply equal voting rights under Title I. Some interpreted* Calhoon *to find no discrimination when unions provided members with universal suffrage to vote, notwithstanding behavior that dilutes the power of votes or undermines members' ability to vote in the first place. Other courts found Title I protects against discrimination that undermines a meaningful vote, which covers a broader stratum of behavior than denying a vote outright. This Note contends federal courts should more aggressively adopt a meaningful vote standard. The federal judiciary can prohibit an expansive set of discriminatory behavior under Title I and still avoid excessive interreference in internal union affairs. Also, in protecting a meaningful vote, courts would not have to transgress* Calhoon*'s statement that Title I only protects against discrimination. Title I case law could also function as a potential road map for legislative action.*

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INTRODUCTION

In 2018, Local 653 of the United Food and Commercial Workers union negotiated a new collective bargaining agreement with SuperValu Cub Foods, a Minnesota grocery store chain.[1] Under the new agreement, a subset of workers would lose a special pension plan upon their retirement after thirty years of employment.[2] When union leadership brought the agreement forward for a vote, they allegedly did not mention changes to the pension plan in materials they provided members.[3] Although union staff were available to answer questions, they did so during a timeframe that largely overlapped with the

1. Nagel v. United Food & Com. Workers Union, Loc. 653, No. 18-cv-1053, 2019 WL 1025249, at *1 (D. Minn. Mar. 4, 2019).

2. *Id.*

3. *Id.*

vote itself.[4] Purportedly, union staff moved members who had previously asked about the pension to a separate room to not alert others.[5] Membership proceeded to ratify the agreement, and a member proceeded to sue the union in Minnesota federal district court.[6]

The member invoked an important labor law from the 1950s, the Labor-Management Reporting and Disclosure Act ("LMRDA"), otherwise known as the Landrum–Griffin Act, which Congress passed to fight union corruption and to guarantee members' basic democratic rights within their unions.[7] In his lawsuit, the member employed a provision in the LMRDA's labor Bill of Rights, which is under Title I of the Act, and codified at 29 U.S.C. §§ 411–415.[8] The specific provision the member employed was section 411(a)(1), which states that all union members "shall have equal rights and privileges . . . to nominate candidates" and vote in union "elections or referendums" but "subject to reasonable rules and regulations" in the union "constitution and bylaws."[9]

The member argued the union deprived him of "a *meaningful* vote."[10] However, the district court cited language from a 1964 U.S. Supreme Court case, *Calhoon v. Harvey*, to assert Title I only commands "that members and classes of members shall not be discriminated against in their right to nominate and vote."[11] The court acknowledged that some circuits interpret the statute to protect a meaningful vote[12]; however, it emphasized the Eighth Circuit only protects a meaningful vote when a union denies a right to some that it grants others.[13] Because the member did not allege discrimination, the court concluded, it could not exercise subject-matter jurisdiction over his claim.[14]

As the case illustrates, the divide within the federal judiciary over a meaningful vote is problematic for union members. When members are not entitled to a meaningful vote, union officers retain leverage to undermine

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4. *Id.*

5. *Id.*

6. *Id.* at *1–2.

7. *Id.* at *2; Clyde W. Summers, *Some Historical Reflections on Landrum-Griffin*, 4 HOFSTRA LAB. L.J. 217, 217–18 (1987).

8. *Nagel*, 2019 WL 1025249, at *7; Labor–Management Reporting and Disclosure Act of 1959, Pub. L. No. 86-257, §§ 101–105, 73 Stat. 519, 522–23 (1959); 29 U.S.C. §§ 411–415 (2018).

9. *Nagel*, 2019 WL 1025249, at *7 (quoting 29 U.S.C. § 411(a)(1)).

10. *Id.*

11. *Id.* at *7–8 (quoting Calhoon v. Harvey, 379 U.S. 134, 139 (1964)) ("Because the LMRDA 'only protects union members against the discriminatory application of union rules' and Nagel has not alleged such discrimination, the LMRDA does not provide the means by which the wrongs alleged here can be addressed." (quoting Loc. No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen & Packers v. Crowley, 467 U.S. 526, 548 (1984))).

12. *Id.* at *7.

13. *Id.*

14. *Id.* at *8.

union democracy if they still grant members an equal right to cast a ballot but suppress the right to vote through other means.

This Note contends the federal judiciary can and should more aggressively protect a meaningful vote. First, federal courts would not have to contradict Supreme Court precedent to do so. A meaningful vote can align with the U.S. Supreme Court's assertion in *Calhoon* that violating equal voting rights under the LMRDA requires discrimination. Second, in adopting a meaningful vote standard, federal courts would not have to start from scratch. In the decades since *Calhoon*, courts that have adopted a meaningful vote standard have persuasively identified types of behavior that undermine a vote's meaning. Furthermore, case law and statute present tools courts can use to constrain a meaningful vote and avoid excessive interference in internal union affairs. Even beyond the federal judiciary, if policy makers decide to protect a meaningful vote through legislation, case law would provide guidance to create rules that adequately balance the rights of individual members with unions' internal cohesion.

I. BACKGROUND

This Part describes the structure of the LMRDA and the history that brought Title I into existence. It will also survey important federal court precedent that interprets voting rights under Title I, mostly among federal courts of appeal.

A. THE BASIC STRUCTURE OF THE LABOR BILL OF RIGHTS UNDER TITLE I OF THE LMRDA

President Eisenhower signed the LMRDA into law on September 14, 1959.[15] The Act's express purpose was to: (1) require unions and employers to report and disclose to the federal government "certain financial transactions and administrative practices"; (2) "to prevent" labor organizations from abusive "administration of trusteeships"; and (3) "to provide standards" for union elections.[16] Another underlying policy purpose for the legislation, despite the new democratic protections for individual members that the law created, was "the desirability of minimum interference by Government in the internal affairs of any private organization."[17]

Title I of the LMRDA contains a labor Bill of Rights ("Bill of Rights"), which, as the name suggests, outlines a series of democratic rights for individual union members.[18] A member has the right to file a civil action in

15. Labor-Management Reporting and Disclosure Act of 1959, Pub. L. No. 86-257, 73 Stat. 519, 519 (1959) (codified as amended in scattered sections of 29 U.S.C.).

16. *Id.*

17. Marcia Greenblatt, Note, *Union Officials and the Labor Bill of Rights*, 57 FORDHAM L. REV. 601, 605–06 (1989) (quoting S. Rep. No. 86-187, at 7 (1959)).

18. Labor-Management Reporting and Disclosure Act §§ 101–105; 29 U.S.C. §§ 411–415.

federal district court to enforce Title I rights.[19] section 411(a)(1) of the labor Bill of Rights provides union members with "equal rights and privileges . . . to nominate candidates" and "to vote in elections or referendums."[20] Section 411(a)(1) also gives members equal rights "to attend membership meetings" and to actively deliberate and vote in those meetings.[21] However, all rights in section 411(a)(1) are subject to "reasonable rules and regulations" in the union's "constitution and bylaws."[22] Even if a union seemingly violates section 411(a)(1), a court may still sanction the union's behavior because it was nevertheless reasonable.[23]

Notably, Title I is not the only section of the LMRDA that pertains to voting. Title IV also applies to voting, but only regulates officer elections.[24] Also, under Title IV, union members must file their complaints through the Secretary of Labor and cannot file directly in court.[25] The relationship between Title I and Title IV has created substantial legal controversy and has prompted decisions from the U.S. Supreme Court.[26]

Among the other provisions in the Bill of Rights is 29 U.S.C. § 411(a)(2), which provides members with free speech and assembly rights,[27] and section 411(a)(3), which provides voting guidelines for "[d]ues, initiation fees, and assessments."[28] Section 411(a)(4) states that unions cannot stop members from filing "an action" in court or "before an[] administrative agency." However,

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19. 29 U.SC. § 412.

20. *Id.* § 411(a)(1).

21. *Id.*

22. *Id.*

23. *Id.*

24. Labor–Management Reporting and Disclosure Act of 1959, Pub. L. No. 86-257, §§ 401–404, 73 Stat. 519, 532–35 (1959); *see* 29 U.SC. §§ 481–483. Title IV contains special requirements for national, international, local unions, and intermediate bodies within unions, to elect officers at certain time intervals. 29 U.SC. § 481(a)–(b), (d). Title IV also regulates distribution of membership lists and campaign literature for union elections. *Id.* § 481(c). Subject to certain statutory exceptions, and qualifications the union itself reasonably imposes, all members in good standing are eligible to be candidates for office and members in good standing are "entitled to one vote." *Id.* § 481(e). Unions must preserve records from elections and cannot use dues, levies, or assessments to promote a candidate for office. *Id.* § 481(g). Title IV also regulates removal of officers for "serious misconduct." *Id.* § 481(h)–(i). 29 U.S.C. § 482 details the basic rules and procedure for the Secretary of Labor to enforce voting rights under Title VI.

25. 29 U.SC. § 482.

26. *See* Calhoon v. Harvey, 379 U.S. 134, 138–41 (1964). In *Calhoon*, the Court held that the reasonableness of eligibility requirements for candidacy was not a valid question under 29 U.S.C. § 411(a)(1). *Id.* at 140. Because members did not allege discrimination in their right to nominate, they did not have a complaint under the statute. *Id.* Section IV provided a more elaborate scheme to regulate elections for union officers, including a requirement for unions to impose uniform and reasonable qualifications on candidates, with the Secretary of Labor having sole authority to file a complaint. *Id.*; *see* Loc. No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen & Packers v. Crowley, 467 U.S. 526, 535–50 (1984).

27. 29 U.S.C. § 411(a)(2).

28. *Id.* § 411(a)(3).

courts may still require members to first exhaust internal "hearing procedures."[29] In addition, an "interested employer or employer association" cannot "directly or indirectly finance, encourage, or participate in, except as a party" an action a member brings.[30] Section 411(a)(5) protects members from discipline for failure to pay dues unless unions serve members with specific written charges, give reasonable time for a defense, and provide "a full and fair hearing."[31] Lastly, section 411(b)(5) guarantees that any provision in a union constitution or bylaw that conflicts with Title I is invalid.[32]

In addition, section 412 provides members with the right to sue their unions to enforce the Bill of Rights within the jurisdiction of a U.S. district court "where [an] alleged violation occurred, or where the principal office of such labor organization is located."[33] However, as section 413 affirms, the Bill of Rights does not limit members' access to other "rights and remedies" under state or federal law or under the union's constitution or bylaws.[34]

The Bill of Rights also contains special provisions on access to copies of collective bargaining agreements. Section 414 mandates that locals forward collective bargaining agreements to directly affected members upon request.[35] The provision also orders labor organizations other than locals to forward collective bargaining agreements to constituent units with members the agreements directly affect.[36] Secretaries within a union also must have copies of collective bargaining agreements available for membership to inspect at the organization's principal office.[37] Section 415, the last statute within the Bill of Rights, states that "[e]very labor organization shall inform its members concerning the provisions of" the Bill of Rights.[38]

B. THE POLITICAL CONTEXT SURROUNDING THE ENACTMENT OF THE LMRDA

In the 1930s and the 1940s, two monumental pieces of labor legislation preceded the LMRDA: the Wagner Act and the Taft–Hartley Act. Controversy over Taft–Hartley, along with activism to grant union members individual rights within their unions, motivated various pushes for labor reform. However, ultimately, the McClellan Committee's investigation into union corruption broke the political logjam for passage of the LMRDA.[39] An odd coalition during a tense legislative process produced the Title I labor Bill of

29. *Id.* § 411(a)(4).
30. *Id.*
31. *Id.* § 411(a)(5).
32. *Id.*
33. *Id.* § 412.
34. *Id.* § 413.
35. *Id.* § 414.
36. *Id.*
37. *Id.*
38. *Id.* § 415.
39. *See infra* Section I.B.2.

Rights. Ultimately, the LMRDA created a mixed mandate: to protect union members' individual rights but also to avoid heavy-handed union regulation.

1. Important Labor Legislation that Preceded the LMRDA

In 1935, President Roosevelt signed into law the National Labor Relations Act ("NLRA"), also known as the Wagner Act, which gave workers the right to organize and bargain collectively under the rationale that doing so was necessary to protect the "free flow of commerce."[40] The NLRA provided management and workers with strict rules for union organization and created the National Labor Relations Board to investigate claims of unfair labor practices.[41] Because collective bargaining became a basic right for workers, the law provided an alternative to strikes as the primary tool for workers to assert power.[42]

Management struck back with the Taft–Hartley Act, which Congress passed in 1947 over President Truman's veto.[43] The Act gave states the authority to "pass right-to-work statutes" and required unions to provide notice before a strike.[44] It also prohibited closed shop arrangements,[45] outlawed secondary boycotts,[46] and prohibited supervisors from the right to organize.[47] Notably, the Act also created a cause of action to sue unions for breach of a contract. However, as codified under 29 U.S.C. § 185(a), the contract must have been "between an employer and a labor organization" or between labor organizations.[48] The Supreme Court subsequently allowed union members to sue under the statute as third parties to contractual agreements, including to enforce a contract in the form of a union constitution.[49]

40. 29 U.S.C. § 151.

41. Bashar H. Malkawi, *Labor and Management Relationships in the Twenty-First Century: The Employee/Supervisor Dichotomy*, 12 N.Y.C. L. REV. 1, 2–3 (2008).

42. *Id.* at 3.

43. *Id.* at 5.

44. *Id.*

45. Under a closed shop arrangement, an employer enters an agreement with a union to hire "only union members in good standing." *Closed Shop*, BLACK'S LAW DICTIONARY (11th ed. 2019).

46. Under Taft–Hartley, unions can strike a primary employer, but they cannot coerce neutral employers to cease a business relationship with the primary employer. *Secondary Boycotts (Section 8(b)(4))*, NAT'L LAB. RELS. BD., https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/secondary-boycotts-section-8b4 [https://perma.cc/V2RU-R4M8].

47. Malkawi, *supra* note 41, at 5.

48. 29 U.S.C. § 185(a).

49. The Supreme Court has interpreted 29 U.S.C. § 185(a) to allow union members to sue their unions for violating contracts they enter with another union in the form of a collective bargaining agreement or a constitution. *See* Woodell, Jr. v. Int'l Brotherhood of Elec. Workers, Loc. 71, 502 U.S. 93, 100–02 (1991).

2. The McClellan Hearings and the Enactment of the Labor Bill of Rights

Prior to the LMRDA, rank-and-file members had limited recourse when they believed their unions internally suppressed democracy.[50] The most reliable cause of action was breach of contract because state courts generally viewed union constitutions and bylaws as legally binding agreements.[51] However, if the constitution and bylaws did not create a given democratic right, members had no cause of action.[52]

Before World War II, the American public lacked evident concern about union democracy.[53] But subsequent growth in membership made unions more visible and powerful within American society.[54] Around nine million Americans belonged to a union prior to the Second World War, but in the late 1950s, that figure reached seventeen million.[55] Internal governance within unions took on greater importance as a result.[56] As early as 1943, the American Civil Liberties Union ("ACLU") published a pamphlet to promote union democracy.[57] The pamphlet referenced specific incidents where unions did not exercise democratic processes and advocated for a labor Bill of Rights.[58] Academics, like Sumner H. Slichter, proposed ideas for legislation where the federal government would regulate unions internally.[59]

Another factor that motivated the LMRDA was the push among pro-labor and pro-management interests to amend the Taft–Hartley Act.[60] Unions initially sought to repeal Taft–Hartley entirely, but due to the strength of opposition, eventually sought only selective amendments instead.[61] The labor movement struggled, however, to find sufficient unanimity on how exactly to do so.[62] Meanwhile, management lobbied for further changes that would impose additional "restrictions on union activities," but resistance from labor was too strong to overcome.[63] Ultimately, the main catalyst for the LMRDA came not from scholarly articles or political desire for alterations to Taft–

50. JANICE R. BELLACE, ALAN D. BERKOWITZ & BRUCE D. VAN DUSEN, THE LANDRUM-GRIFFIN ACT: TWENTY YEARS OF FEDERAL PROTECTION OF UNION MEMBERS' RIGHTS 1 (1979).

51. *Id.*

52. *Id.*

53. *Id.* at 2.

54. *Id.*

55. *Id.* at 4.

56. *Id.*

57. *Id.*; Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 HARV. L. REV. 851, 851 (1960).

58. BELLACE ET AL., *supra* note 50, at 1.

59. *Id.* at 2.

60. Aaron, *supra* note 57, at 852.

61. *Id.*

62. *Id.*

63. *Id.*

Hartley.[64] Instead, it was public outcry in response to Congressional investigations into union corruption.[65]

In 1954, Democrats won control of Congress.[66] Senator John McClellan, a conservative democrat from Arkansas, became chairman of the Committee on Government Operations and the Subcommittee on Investigations.[67] Robert Kennedy, who had previous experience with that same committee, agreed to provide counsel.[68] In the preceding years, concern within Congress about union corruption had mounted. From 1950 to 1951, Senator Estes Kefauver, a democrat from Tennessee, undertook televised hearings into organized crime, which revealed "shocking corruption in the International Longshoremen's Association."[69] In 1953, a series of House investigations revealed evidence of corruption within the International Brotherhood of Teamsters, Chauffeurs, Warehouseman, and Helpers of America ("the Teamsters").[70] At the time, the Teamsters were the largest union in the country with a million and a half members.[71]

Around 1956, lawyer and reporter Clark Mollenhoff, who had written about union corruption in Minneapolis and elsewhere, campaigned to convince Kennedy to investigate the issue of union corruption.[72] Eventually, Kennedy traveled to the west coast and Chicago where he gathered evidence about union violence, intimidation, and misuse of funds.[73] Much of it involved the Teamsters.[74] Upon return, Kennedy informed Senator McClellan of his findings.[75] Because of jurisdictional complications—and because the Senate Labor Committee had historically been gentle when it investigated unions itself—the Senate formed the new Select Committee on Improper-Management in the Labor Management Field, otherwise known as the McClellan Committee ("the Committee").[76] Members included both pro-labor and pro-management senators, ranging from Senator John F. Kennedy to Senator Barry Goldwater,

64. *Id.*

65. *Id.*

66. R. ALTON LEE, EISENHOWER & LANDRUM-GRIFFIN: A STUDY IN LABOR-MANAGEMENT POLITICS 50 (1990).

67. *See id.*

68. *Id.* Kennedy was previously committee counsel for Senator McClellan's predecessor, Senator Joseph McCarthy, who used the committee to with-hunt alleged "subversives in government." *Id.*

69. *Id.* at 45–46.

70. *Id.* at 47–48.

71. *Id.* at 49.

72. *Id.* at 51

73. *Id.* at 51–52. On his trip, Kennedy met a jukebox operator and labor organizer in California who was told to stay away from San Diego "or be killed." *Id.* at 51. When he returned to San Diego, he was knocked out, and surgeons later found a large cucumber lodged in his abdomen. *Id.* He was warned "he would receive a watermelon implant" next. *Id.*

74. *See id.* at 51–52.

75. *Id.* at 52.

76. *Id.* at 52–53.

the future presidential nominee and conservative Republican from Arizona.[77] The Committee staff eventually grew to 104 people and "heard 1,526 witnesses during 270 days of public hearings."[78] Committee personnel "traveled over 2.5 million miles and produced 20,432 pages of testimony."[79] Thirty-four of fifty-eight volumes of that testimony related to the Teamsters.[80]

In early 1957, the Committee proceeded to investigate Teamster President Dave Beck and revealed egregious instances where he siphoned off hundreds of thousands of dollars in union funds for personal benefit.[81] The findings held up in court and led to convictions for tax evasion and larceny.[82] In June of 1957, a jury acquitted Teamster officer Jimmy Hoffa of bribery and conspiracy.[83] "[D]ays later, the McClellan Committee announced a major investigation" into the Teamsters.[84] However, Hoffa, who fed information to investigators about Beck, succeeded him as president in October of that year anyway.[85] Hoffa had strong connections to organized crime, and the Committee revealed many instances of questionable loans to him.[86]

To retain power, Teamster officers would disempower rank-and-file members by systematically placing locals that opposed Hoffa into trusteeships.[87] The Teamsters would appoint a Hoffa ally as trustee who then would put the local back into compliance with Hoffa's policies.[88] Additionally, only members who paid dues by the first of each month could run for office.[89] Rank-and-file members paid dues through a check off arrangement, and unlike existing officers, could not pay dues personally before due dates.[90] Therefore, officers almost always ran unopposed.[91]

The McClellan Committee investigated other unions as well. At its 1956 convention, the bakery and confectionary workers' union amended its bylaws to provide that only convention attendees could elect officers, rather than the entire rank-and-file membership.[92] The union's executive council seized

77. *Id.* at 53.
78. *Id.* at 54.
79. *Id.*
80. *Id.* at 62.
81. *Id.* at 55.
82. *Id.*
83. *Id.* at 58–59.
84. *Id.*
85. *Id.* at 54–55.
86. *Id.* at 55, 60.
87. *Id.* at 56–57.
88. *Id.*
89. *Id.*
90. *Id.* at 57. Under a check-off system, "an employer deducts union dues directly from the employees' wages and remits those dues to the union." *Check-Off System*, BLACK'S LAW DICTIONARY (11th ed. 2019).
91. LEE, *supra* note 66, at 57.
92. *Id.* at 62.

power to set salaries for the president and the secretary-treasury, both of which immediately doubled.[93] The union president spent thousands each year on entertainment that included family vacations and keeping a mistress.[94] Officers for the San Francisco operating engineers' union purchased a yacht and airplane.[95] To stay in power, they stuffed ballot boxes and had opponents physically beat, killing at least one.[96]

When the hearings ended, the "Committee submitted an interim report in March 1958."[97] Among other proposals, the report recommended legislation to protect union democracy through regulating elections and secret ballots.[98] In response, the ACLU reaffirmed its support for a labor bill of rights with protection for "speech, press, and assembly, and equal treatment and due process."[99] Because of the publicized nature of the hearings, many Americans came to associate unions with Hoffa and his "arrogance and bossism."[100] The investigations "furnished ammunition both to those primarily concerned with protecting the rights of union members and to others whose principal aim was to reduce the economic and political power of unions."[101] It became clear Congress would enact legislation to respond.[102]

On January 20, 1959, Senator John F. Kennedy, "on behalf of himself and eleven other senators," introduced the "Labor-Management Reform Bill," otherwise known as the Kennedy–Ervin bill.[103] In a majority report, the Senate Labor Committee discouraged excessive government control over unions and encouraged labor to emulate the American Federation of Labor and Congress of Industrial Organizations ("AFL–CIO") through its voluntary adoption of codes for ethical conduct.[104] Throughout the spring of 1959, the AFL–CIO overestimated its political clout and refused to accept any compromises that would modify Kennedy–Ervin.[105] Then, on April 22, 1959, Senator McClellan surprised the pro-labor coalition that supported Kennedy–Irwin and proposed an amendment to add a bill of rights to Title I of the legislation. For two hours, he gave a highly emotional speech in support of a bill of rights.[106] The senators did not have adequate "opportunity to read

93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.* at 72.
98. *Id.* at 72–73.
99. Aaron, *supra* note 57, at 857.
100. LEE, *supra* note 66, at 73.
101. Aaron, *supra* note 57, at 852.
102. *Id.*
103. *Id.* at 853.
104. *Id.* at 857–58.
105. BELLACE ET AL., *supra* note 50, at 5.
106. *Id.* at 6.

the exact language" in the amendment.[107] Nevertheless, they passed it on a close vote of forty-seven to forty-six.[108] However, once the senators fully absorbed the amendment, the political currents again changed.

Southern senators, who largely supported the McClellan amendment, grew concerned the federal government would use the Bill of Rights to racially integrate unions.[109] Liberal democrats, in contrast, did not want to renege on the Bill of Rights entirely and completely sanction union segregation.[110] Notably, the McClellan amendment gave the Secretary of Labor and the Attorney General the authority to sue unions in federal court for injunctive relief.[111]

Republican Senator Thomas Kuchel of California proposed a bipartisan compromise to retain the Bill of Rights but still walk back the McClellan amendment.[112] The Senate passed his changes by a vote of seventy-seven to fourteen with support from a disparate coalition that included "the AFL-CIO, southern senators, the Democratic leadership, and McClellan himself."[113] The Kuchel amendment did away with the provisions in McClellan's amendment that allowed the Department of Labor to investigate violations under Title I. Instead, as the southern senators preferred, members would have to initiate private suits, which they would likely struggle to afford in the first place.[114] After Kuchel's amendment passed, the Bill of Rights attracted little additional interest through the remainder of the legislative process, and President Eisenhower signed the final version of the LMRDA into law that September.[115]

C. Division Among Federal Courts Over the Meaning of Voting Rights Under Title I

The resulting Bill of Rights was "plagued with ambiguities."[116] The contentious political context leading to Congress's enactment produced legislation ripe for judicial disagreement. Courts faced a mandate to uphold democratic rights for individual union members but still avoid "interference in internal union government."[117]

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107. LEE, *supra* note 66, at 110. Liberal democrats were so confident the Senate would pass the Kennedy–Ervin bill, key pro-union senators Hubert Humphrey and Paul Douglas had left Washington D.C. for other functions when the Senate passed McClellan's amendment. *Id.* at 110–11.

108. BELLACE ET AL., *supra* note 50, at 6.

109. Aaron, *supra* note 57, at 859.

110. LEE, *supra* note 66, at 115.

111. *Id.* at 109.

112. *Id.* at 114.

113. *Id.* at 114–15.

114. DORIS B. MCLAUGHLIN & ANITA L. W. SCHOOMAKER, THE LANDRUM-GRIFFIN ACT AND UNION DEMOCRACY 76 (1979).

115. *See* BELLACE ET AL., *supra* note 50, at 7.

116. James R. Beaird, *Some Aspects of the LMRDA "Bill of Rights,"* 5 GA. L. REV. 661, 664 (1971).

117. *Id.*

The 1964 Supreme Court opinion, *Calhoon*, interpreted voting rights under Title I solely to prohibit discrimination. However, subsequent lower court decisions diverged about whether Title I also required a "meaningful vote" and to what extent.

1. *Calhoon* and the Discrimination Standard

Calhoon interpreted Title I to prohibit unions from discriminating between members in providing voting rights.[118] In *Calhoon*, members of the National Marine Engineers' Beneficial Association sued their union to allege that its constitution and bylaws violated voting rights under Title I.[119] The union constitution stated that members were not eligible for office unless they met certain requirements. First, they must have spent five years as union members.[120] Second, they must have served at least 180 days in the past "three years on vessels covered by collective bargaining agreements with the national or its subsidiary [union] bodies."[121] The union bylaws also provided that a union member could not "nominate anyone for office but himself."[122]

The Supreme Court concluded the district court lacked jurisdiction over a Title I voting rights claim.[123] The Court indicated Title I simply commands unions to not discriminate against members "in their right to nominate and vote."[124] Because the union did not deny the members a right it granted others, the members could not sue under the Title I.[125] The Court conceded that the members likely had a cause of action under Title IV, which provides other remedies for claims related to union elections.[126] However, because Title IV mandates that members file claims with the Secretary of Labor, rather than with the courts directly, the trial court lacked authority to adjudicate the matter.[127]

2. The Meaningful Vote Standard

Among the most frequently discussed decisions related to a meaningful vote under Title I is the D.C. Circuit Court of Appeals case *Bunz*. In that case, the court liberally construed *Calhoon*'s discrimination standard to integrate a "meaningful vote" standard into its analysis.[128]

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118. *See* Calhoon v. Harvey, 379 U.S. 134, 138–39 (1964).
119. *See id.* at 135.
120. *Id.* at 136.
121. *Id.*
122. *Id.*
123. *Id.* at 139.
124. *Id.*
125. *Id.*
126. *Id.* at 141.
127. *Id.* at 140–41.
128. Bunz v. Moving Picture Mach. Operators' Protective Union Loc. 224, 567 F.2d 1117, 1121–22 (D.C. Cir. 1977).

The case involved a union with bylaws that required at least two thirds of members at meetings to approve assessments.[129] However, union leadership decided to impose an assessment of fifty dollars per month on members who crossed the picket line during a strike, despite the assessment not garnering a two-third majority.[130] When a member sued to allege the union improperly implemented the assessment, the union asserted that Title I only required majority support to pass an assessment, and therefore, it had justification to skirt the bylaw.[131]

The court rejected the union's argument and instead declared the right to vote must be meaningful and unions cannot insulate themselves from Title I violations through universal suffrage.[132] Specifically, the court indicated the equal right to vote protects from "serious discrimination, irregularities, or foul play at any stage of the electoral process."[133] However, the *Bunz* court did not bypass *Calhoon* and its discrimination standard. Instead, the court reasoned the union adopted a frivolous interpretation of its bylaw both to discriminate against minority voters who opposed the assessment and to weaken the power of their votes through a simple majority threshold.[134] The risk of undue interference in a union's internal affairs is of minimal risk, the court indicated, when a union so clearly violates its own bylaws.[135] The court cited additional cases where a union violated voting practices and procedures in its constitution or bylaws, including where officer's failed to keep members informed,[136] the union did not produce the ballots in suitable form,[137]

129. *Id.* at 1119.

130. *Id.*

131. *Id.*

132. *Id.* at 1122.

133. *Id.* at 1121–22.

134. *Id.* at 1122.

135. *Id.* at 1124.

136. *Id.* at 1121 n.22 (citing Blanchard v. Johnson, 388 F. Supp. 208, 213–14 (N.D. Ohio 1975), *aff'd in relevant part*, 532 F.2d 1974 (6th Cir. 1976)). For further detail on *Blanchard*, see *infra* text accompanying notes 144–49.

137. *Bunz*, 567 F.2d at 1121 n.24 (citing Miller v. Util. Constr. & Maint. Indep. Union, No. C3-75-53, 1975 WL 12042, at *2 (S.D. Ohio Apr. 17, 1975)). In *Miller*, the union-provided ballots featured a line for write-in candidates when the bylaws required nominees for office to signify whether they accepted or declined nominations. *Miller*, 1975 WL 12042, at *1. The ballots were also distributed via mail when the bylaws required ballots to be secret. *Id.* The court found the format of the ballots violated 29 U.S.C. § 411(a)(1)–(2). *Id.* at *2.

members did not vote separately on provisions as the bylaws provided,[138] and the union counted improperly cast ballots.[139]

In *McGinnis*, the Seventh Circuit also applied a meaningful vote standard when it found a union executed voting rights under its bylaws in a discriminatory manner.[140] There, a union assumed power under its bylaws to issue a policy that prevented regional meetings and mail balloting for a vote on amendments to its constitution and bylaws.[141] Officers instead required all members to attend an in-person meeting in Chicago despite that an estimated twenty-five to forty percent of members lived and worked "more than 100 miles from" the city, some in New York and Texas.[142] The court found the union violated Title I, emphasizing "that facially neutral union rules or practices which nevertheless result in disparate treatment of union members and have a discriminatory effect may violate Title I."[143]

Not all federal courts that have applied a meaningful vote standard have tethered themselves to the discrimination standard in *Calhoon*. In *Blanchard*, a case from the Northern District of Ohio, the court stated a general principle that union members are entitled to a meaningful vote, which in turn, makes members entitled to an "informed vote" as well.[144] However, the court did not undertake a discrimination inquiry under *Calhoon*.

Blanchard involved a situation where a union mailed members a ballot on the question of affiliation with another union.[145] A letter attached to the ballot, "purported to represent the entire agreement" but did not include "discussed oral agreements" or any constitutional provisions that would bind members in the new union.[146] The court reasoned the right to vote under the

138. *Bunz*, 567 F.2d at 1121 n.24 (citing Young v. Hayes, 195 F. Supp. 911, 916–17 (D.D.C. 1961)). In *Young*, a union provided members with a ballot that contained dozens of amendments to the union constitution, bundled together for members to vote upon as a single unit. *Young*, 195 F. Supp. at 913. The court held the ballot violated the LMRDA, in part because the amendments comprised of separate subjects when the union constitution required separate votes for separate subjects. *Id.* at 913, 916.

139. *Bunz*, 567 F.2d at 1121–22 n.25 (citing Stettner v. Int'l Printing Pressmen, 278 F. Supp. 675, 677–78 (E.D. Tenn. 1967)). In *Stettner*, during a vote to amend the union constitution and empower the board of directors to relocate union headquarters, officers counted numerous ballots that did not meet registration requirements under the union constitution. *Stettner*, 278 F. Supp. at 677. Because the improperly cast ballots diluted the power of other members' properly cast ballots, the court found those members lacked a meaningful vote and suffered discrimination under the LMRDA. *Id.* at 677, 681.

140. McGinnis v. Loc. Union 710, Int'l Brotherhood of Teamsters, 774 F.2d 196, 199, 201 (7th Cir. 1985).

141. *Id.* at 198.

142. *Id.* at 199.

143. *Id.* at 200.

144. Blanchard v. Johnson, 388 F. Supp. 208, 213–14 (N.D. Ohio 1974), *aff'd in relevant part*, 532 F.2d 1074 (6th Cir. 1976).

145. *Id.* at 212.

146. *Id.*

LMRDA must be a meaningful and "not a deliberately uninformed vote."[147] Therefore, the court held the members had the right to know the terms of the affiliation proposal, the governing laws of the organization with which they would affiliate, along with "the views of other members on the proposals."[148] The Sixth Circuit affirmed the district court's interpretation of voting rights under Title I but overturned a portion of its holding mandating the union add an additional affiliation proposal to the referendum ballot, finding the court "unnecessarily intruded into the internal operations of" the union.[149]

Similarly, in *Sheldon*, a case before the Second Circuit, the court ordered a union to provide its member list to a mailing service so that members could send mail to other members about a new constitution up for a vote.[150] Members sought to send the mailer because officers were allegedly trying to suppress information about potentially unpopular provisions in the new constitution.[151] The court reasoned the officers' refusal to provide "access to the membership mailing list" was "so patently unfair" that their conduct denied equal voting rights, but like in *Blanchard*, did not apply the discrimination standard under *Calhoon*.[152]

3. Rejection and Narrow Application of a Meaningful Vote

In comparison to cases like *Bunz*, and unlike its prior holding in *Sheldon*, the Second Circuit subsequently interpreted *Calhoon* to disregard a meaningful vote.[153] In *Bevona*, a union member proposed multiple amendments to the union constitution and put them up for a vote.[154] The member requested the union conduct voting all day from 6:00 AM to 9:00 PM "and that he be afforded the same opportunity as the union's elected leadership to use union resources to express his views on the amendments."[155] When the union did not comply, supporters of the amendment sued under the LMRDA to enjoin the union from the vote.[156] The lower court ordered the union to keep the polls open continuously from 2:00 PM to 9:00 PM.[157] When the larger membership defeated the amendments, the dissident members then filed an Amended and Supplemental Complaint to allege the union failed to notify

147. *Id.* at 214.

148. *Id.*

149. *Blanchard*, 532 F.2d at 1078.

150. Sheldon v. O'Callaghan, 497 F.2d 1276, 1281–83 (2d Cir. 1974).

151. *Id.* at 1282–83, 1283 n.9.

152. *Id.*

153. *See* Members for a Better Union v. Bevona, 152 F.3d 58, 65–66 (2d Cir. 1998) (vacating the district court's grant of union members' motion for preliminary injunction).

154. *Id.* at 60.

155. *Id.*

156. *Id.*

157. *Id.*

members about the extended hours.[158] They also alleged the union's failure to publish the amendments in the newspaper deprived them of an informed vote and that leadership "rendered the referendum unfair."[159]

The court determined the members did not state a valid claim under Title I because the members did not assert the union discriminated against them or "denied a right to vote" it "granted to other members."[160] The court expressly dismissed the meaningful vote standard in *Bunz*, stating that the opinion could not compel it to depart "from *Calhoon*'s unequivocal interpretation."[161] As precedent, the court cited with approval another Second Circuit case, which provided that 29 U.S.C. § 411(a)(1) protects only against direct attacks to the right to vote.[162] Nevertheless, the court avoided conflict with *Sheldon*[163] by emphasizing the union in the current case offered to help opponents arrange for mailings to membership.[164]

In *Bevona*, another case in the Second Circuit, the Southern District of New York held that a union's choice about the method for casting a vote cannot trigger a finding of discrimination under Title I. In *Cunningham*, officers organized a vote for members on a new contract with their employer.[165] The proposed agreement gave members with the job title of Senior Stationary Engineer "fewer holidays, vacation days, and sick" days and provided for lower contributions toward retirement.[166] Previously, there had been individual agreements for separate job titles, which members with the applicable title ratified separately.[167] However, for the new agreement, the union chose to conduct a joint ratification vote for all members, regardless of title.[168] After the membership at large approved the agreement, multiple members with the title of Senior Stationary Engineer sued under Title I, claiming the union discriminated against them by purposefully altering voting procedures to ensure they lost.[169]

158. *Id.*

159. *Id.* at 60–61.

160. *Id.* at 65.

161. *Id.*

162. *Id.* at 63 (citing Navarro v. Gannon, 385 F.2d 512, 520 (2d Cir. 1967)); *see Navarro*, 385 F.2d at 520 (stating that voting right under Title I must be subject to direct attack "to warrant suit").

163. *See supra* notes 150–52 and accompanying text.

164. *Bevona*, 152 F.3d at 65.

165. Cunningham v. Loc. 30, Int'l Union of Operating Eng'rs, 234 F. Supp. 2d 383, 385 (S.D.N.Y. 2002).

166. *Id.* at 386.

167. *Id.*

168. *Id.*

169. *Id.* at 389–90, 393.

The court granted the union summary judgment.[170] Citing *Bevona*, the court reaffirmed that Title I does not grant members a meaningful vote.[171] The court then cautioned that Title I only prohibits "direct attack[s]" against the right to vote, not voting procedures that dilute the power of particular votes.[172] Because the members staked their claim on the union diluting the power of their votes, rather than taking away their right to vote, the members could not adequately assert the union discriminated against them in a manner Title I would prohibit.[173]

In *Ackley*, the Ninth Circuit refrained from affirming a meaningful vote standard premised on access to meaningful information.[174] The court's primary rationale was to ensure union leaders can negotiate collective bargaining agreements without excessive interference.[175] In *Ackley*, two members sued their union and alleged its officers "fail[ed] to disclose material changes" to a collective bargaining agreement before a vote, denying them of meaningful information beforehand.[176] The union bylaws required that members ratify collective bargaining agreements but did not specify a particular method for ratification.[177]

In response, the court held firm that Title I voting rights prohibit discrimination "pure and simple" and require "a union member . . . allege a denial of rights accorded to other members."[178] The court determined that because "the . . . union . . . furnished the same type and amount of information to all" members, no discrimination occurred.[179] The court also emphasized that the nature of collective bargaining requires officers to have more information about an agreement than rank-and-file-members.[180] "The question whether the information provided was biased . . . is irrelevant," the court stated, and reasoned that if the rule were otherwise, a union's ability to collectively bargain might come under threat.[181] The court also cast doubt on whether union members were entitled to meaningful information in the

170. *Id.* at 394.

171. *Id.* at 393.

172. *Id.*

173. *Id.*

174. Ackley v. W. Conf. of Teamsters, 958 F.2d 1463, 1473 (9th Cir. 1992).

175. *Id.* at 1468, 1473–74.

176. *Id.* at 1468.

177. *Id.* at 1467, 1473.

178. *Id.* at 1473 (citing Calhoon v. Harvey, 379 U.S. 134, 138–39 (1964); Lodge 1380, Bhd. of Ry., Airline & Steamship Clerks (BRAC) v. Dennis, 625 F.2d 819, 822, 826 (9th Cir.1980); *see also* Grant v. Chicago Truck Drivers, 806 F.2d 114, 117 (7th Cir.1986); Alexander v. Int'l Union of Operating Engineers, 624 F.2d 1235, 1240 (5th Cir.1980); Smith v. United Mine Workers, 493 F.2d 1241, 1244 (10th Cir.1974)).

179. *Id.*

180. *Id.* at 1474.

181. *Id.*

first place.[182] When a right to vote arises from a union's constitution or bylaws, the court said, and not a provision in the LMRDA itself, a union's constitution and bylaws dictate how the vote will be conducted.[183] In such circumstances, the LMRDA would no longer remedy a breach.[184] Instead, 29 U.S.C. § 185(a), which provides a contractual remedy, would apply.[185] Therefore, any "remedy for the conduct" the members complained of "lies elsewhere."[186]

Courts that apply a meaningful vote sometimes grant strong deference to a union's interpretation of its constitution and bylaws or its methods for executing votes, even if they violate the constitution or bylaws. The Eighth Circuit, for example, applied a meaningful vote standard but would not find a union denied a meaningful vote when it did not violate its constitution or bylaws. In *Marshall*, a union conducted a "voice vote" on a Memorandum of Understanding that would give yeast workers a right to transfer to a new brewery, and at the time would allow workers to retain "endtailed seniority."[187] Under an endtailed system, seniority depends upon length of union membership, in contrast to a dovetailed system where membership depends upon length of service with a company.[188] After the vote, "the Local representative signed the Memorandum of Understanding on behalf of the yeast workers' collective bargaining unit."[189] Union members brought a class action that the voice-only vote violated Title I.[190]

In its holding, the court acknowledged that the union constitution and bylaws required a secret ballot vote for collective bargaining agreements and amendments to collective bargaining agreements.[191] However, the court, in granting strong deference to the union, determined it interpreted the constitution and bylaws reasonably when it decided that a Memorandum of Understanding fit into neither category.[192] Therefore, the court held the union did not discriminate against members or violate their right to a meaningful vote.[193]

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182. *Id.* at 1476.

183. *Id.*

184. *Id.*

185. *Id.* at 1476–77.

186. *Id.* at 1473.

187. Marshall v. Loc. Union No. 6, Brewers & Maltsters & Gen. Lab. Dep'ts, 960 F.2d 1360, 1362 (8th Cir. 1992).

188. *See id.* Under the dovetail system, seniority lists merge so that workers new to a plant carry their seniority status over from their old plant; under an endtail system, seniority accrues upon the date of employment or another agreed upon time and does not carry over from prior employment. *Id.* at 1362 n.3.

189. *Id.* at 1362.

190. *Id.* at 1363–66.

191. *Id.* at 1367–70.

192. *Id.* at 1369–70.

193. *Id.*

The Seventh Circuit refused to extend a meaningful vote to a situation where a union altered the procedure for a vote before the vote took place even under the presumption the change violated the union constitution.[194] In *Fulk*, a union voted upon two changes to an agreement with a railway company.[195] The first change related to crew size and the second related to employee pay-outs upon "death, retirement or termination."[196] The union brought up the first change for an aggregate vote but the second change for a district-by-district vote.[197] Some districts voted down the latter change while others approved it.[198] Members sued under the LMRDA to contend that the union instituted the district-by-district voting procedure to discriminate against them in favor of the "minority viewpoint."[199] To evaluate the union's motion for summary judgment, the court assumed the voting procedure violated the union constitution.[200]

The court acknowledged that the district-by-district voting was more favorable to the aggregate's minority position in some districts, as is always the case when an electoral body divides into "smaller voting units."[201] However, the court concluded that no discrimination took place because the union did not divide voters into districts with the intent to empower a group that it previously identified.[202] The court in *Fulk* acknowledged that in *Bunz* the union's last-minute change to voting rules after the vote itself may have impacted the meaningfulness of the minority's votes.[203] With changes to voting rules after a vote, the court said, minority voters, who already took a stance, "at least arguably" suffered discrimination, and also, could not "assess intelligently beforehand how much to campaign for their desired outcome."[204] However, the court stated, before a vote, "a union's a priori choice among non-discriminatory voting rules does not have that effect."[205] The district-by-district system, the court provided, does not discriminate against members any more than the original two-thirds system in *Bunz*.[206] Many different procedures for conducting a vote can satisfy an equal vote standard, the court indicated, holding the union did not violate Title I.[207]

194. Fulk v. United Transp. Union, 81 F.3d 733, 735 (7th Cir. 1996).
195. *Id.*
196. *Id.*
197. *Id.*
198. *Id.*
199. *Id.* at 734.
200. *Id.* at 735.
201. *Id.* at 737.
202. *Id.*
203. *Id.*
204. *Id.* at 738.
205. *Id.* at 737.
206. *Id.* at 738.
207. *Id.*

II. THE ABSENCE OF A MEANINGFUL VOTE UNDERMINES THE LMRDA AND THE STRENGTH OF UNIONS

As the previous Section clarified, Title I case law features competing perspectives about whether members should have the right to a meaningful vote, and if so, to what extent. In *Bunz*, the D.C. Circuit affirmed that union members are entitled to a meaningful vote when a union violates its own bylaws to nullify ballots members cast.[208] The Second Circuit, however, has stated that Title I only defends votes from "direct attack" and does not extend far beyond the simple act of casting a ballot.[209] The Ninth Circuit has also questioned the right to a meaningful vote, particularly over a right to meaningful information before a vote.[210] By comparison, the Seventh and Eighth Circuit recognize a meaningful vote, but limit its applicability out of deference to unions.[211]

This Part contends that first, the absence of protection for a meaningful vote undermines some of the fundamental policy rationales underlying the LMRDA, and second, that a resurgent labor movement would benefit from meaningful vote protections.

A. THE ABSENCE OF A MEANINGFUL VOTE STANDARD FRUSTRATES THE PURPOSE OF THE LMRDA

A lack of protection for a meaningful vote presents a problem for rank-and-file union members: Although union officers cannot overtly deny members a vote they grant others, they can still undermine the meaning, and ultimately, the power of a vote through other forms of discrimination. Precedent on Title I voting rights appears to create a compromise between two seemingly contradictory LMRDA objectives: government enforcement of union democracy and minimum government interference in unions.[212] However, as prominent labor scholar Clyde Summers observed, democratic protections and minimum interference are "intersupporting values."[213] Democracy is a means to achieve limited interference because when unions make decisions democratically, those decisions have greater legitimacy, and society gives them greater deference.[214] Therefore, while courts should be reticent to regulate

208. *See supra* Section I.C.2.

209. *See supra* Section I.C.3.

210. *See supra* Section I.C.3.

211. *See supra* Section I.C.3.

212. Summers, *supra* note 7, at 220.

213. *Id.*

214. *Impediments to Union Democracy: Public and Private Sector Workers Under the Labor Management Reporting and Disclosure Act: Hearing Before the Subcomm. on Emp.-Emp. Rels. of the H. Comm. on Educ. & the Workforce*, 106th Cong. (1999) [hereinafter *Hearing*], http://commdocs.house.gov/committees/edu/hedcew6-11.000/hedcew6-11.htm [https://perma.cc/C9Y2-T6AK] (statement of Clyde Summers, Jefferson B. Fordham Professor of L. Emeritus, Univ. of Pa. L. School, Bd. of Dirs., Ass'n for Union Democracy, Phila., Pa.).

unions too heavily, they should also understand that interference in union affairs, if well executed, will promote stronger democratic practices within unions, and as a result, the problems that motivate interference will hopefully recede, at least somewhat.

When a meaningful vote is absent, a core aim of the LMRDA, to improve the legitimacy of unions through democracy, loses force. Under the LMRDA, an important component of the democratic process is equal voting rights. Enforcement of equal voting rights through a meaningful vote is integral to reduce unhealthy power differentials between members and officers, something cases like *Bevona* and *Cunningham*, which focus primarily on whether all members have the same rights or privileges to cast a ballot, fail to capture. When officers grant a ballot, but deny a meaningful vote, they undermine the democracy their union constitution and bylaws, or statute, promise.

Other federal laws do not fill the gap that narrow interpretations of Title I voting rights leave behind. Title IV of the LMRDA provides union members with some additional voting protections, but those provisions apply exclusively to officer elections rather than voting measures more broadly.[215] Also, the Department of Labor is the sole authority that can enforce measures under Title IV. Some have expressed concern the Department is too lax in enforcing the Act.[216] Although case law under 29 U.S.C. § 185(a) allows members to sue unions for breach of contract, including under union constitutions and bylaws, the contract still must be between unions or unions and employers.[217] If a union member is trying to enforce a constitution or bylaw that does not fit into those parameters, they might lack a federal cause of action. Title I of the LMRDA expressly provides members with "equal rights" to vote in union elections and referendums. A meaningful vote is a natural outgrowth of an equal right to vote and aligns with the text of the LMRDA.

B. A MEANINGFUL VOTE CAN IMPROVE THE LEGITIMACY AND OPERATIONS OF UNIONS

Although unions are less powerful than in previous periods of American history, public enthusiasm for unions has increased in recent years. Protection for union democracy can bolster such enthusiasm by deterring abusive behavior within unions and affirming them as places where workers have agency to advocate for their interests.

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215. *See supra* text accompanying notes 24–26.

216. *See Hearing*, *supra* note 214. Labor activist Herman Benson observed that "[t]he Department of Labor is not the ideal agency for enforcing the Act" because it has "to maintain close relations" with union officials. *Id.* "[I]f 99 percent of [Department] work requires cooperation with unions," Benson stated, it "cannot do an effective job . . . antagonizing union officials." *Id. See generally* Joseph L. Rauh, Jr., *LMRDA—Enforce It or Repeal It*, 5 GA. L. REV. 643 (1971) (discussing flaws in the Department of Labor's enforcement of the LMRDA during the 1969 United Mine Workers of America election between Tony Boyle and Jock Yablonski).

217. *See supra* text accompanying note 48.

Union membership has declined precipitously in the past sixty years. Around one third of workers belonged to a union during the 1950s.[218] By the late 1970s, that rate fell to around one fifth.[219] As of 1977, fourteen million private sector workers belonged to a union.[220] However, as of 2020, only seven million private sector workers belonged to a union.[221] The Great Compression, or "the fall in inequality between 1936 and 1968" coincided with a twelve percent increase in union density, while increased inequality since that time has coincided with reduced union membership.[222] "The symmetry [between] the fall and rise of inequality" and "the rise and fall of union density" suggest "a true causal effect, rather than a purely spurious correlation."[223]

In the past few years, frustration over inequality has instigated a flurry of labor activism. In 2020, public support for unions was higher than any time in recent history, at an estimated sixty-five percent.[224] Strike activity has also increased in recent years, with nearly 485,000 employees "involved in major work stoppages" in 2018, and with those numbers making a modest recovery after the COVID-19 pandemic shut down the economy in 2020.[225] In 2019, in one of the largest private sector strikes in two decades, nearly fifty thousand workers at General Motors sat out work for six weeks and halted car production before they won concessions from management.[226] During the COVID-19 pandemic, the tightening labor market has given workers greater leverage to pressure management for higher pay and benefits.[227] In 2021, workers walked off the job at "fourteen John Deere plants" for the first strike

218. Jeffrey M. Hirsch & Barry T. Hirsch, *The Rise and Fall of Private Sector Unionism: What Next for the NLRA?*, 34 FLA. STATE U. L. REV. 1133, 1137 (2007).

219. *Id.*

220. *Id.*

221. U.S. BUREAU OF LAB. STATS., UNION MEMBERS SUMMARY (2022), https://www.bls.gov/news.release/union2.nro.htm [https://perma.cc/2SWL-XQGL].

222. Henry S. Farber, Daniel Herbst, Ilyana Kuziemko & Suresh Naidu, *Unions and Inequality Over the Twentieth Century: New Evidence from Survey Data*, 136 Q. J. ECON. 1325, 1372 (2021).

223. *Id.*

224. Abigail Johnson Hess, *How the Coronavirus Pandemic May Be Causing Support of Labor Unions to Rise*, CNBC (Jan. 29, 2021, 2:23 PM), https://www.cnbc.com/2021/01/29/support-of-labor-unions-is-at-65percentheres-whats-behind-the-rise.html [https://perma.cc/RTE9-HLMS].

225. Alexia Fernández Campbell, *A Record Number of US Workers Went on Strike in 2018*, VOX (Feb. 13, 2019, 3:00 PM), https://www.vox.com/policy-and-politics/2019/2/13/18223211/worker-teacher-strikes-2018-record [https://perma.cc/FVK5-JYLH]; *see* MARGARET POYDOCK, IHNA MANGUNDAYAO, CELINE MCNICHOLAS & JOHN SCHMITT, ECON. POL'Y INST., DATA SHOW MAJOR STRIKE ACTIVITY INCREASED IN 2021 BUT REMAINS BELOW PRE-PANDEMIC LEVELS 1–2 (2022), https://www.epi.org/publication/2021-work-stoppages [https://perma.cc/9WYZ-T82T].

226. Eli Rosenberg, *Workers Are Fired Up. but Union Participation Is Still on the Decline, New Statistics Show.*, WASH. POST. (Jan. 23, 2020, 12:01 PM), https://www.washingtonpost.com/business/2020/01/22/workers-are-fired-up-union-participation-is-still-decline-new-statistics-show [https://perma.cc/V9TZ-6X7L].

227. *See* John Cassidy, *America's Workers Are Fighting Back: Can They Win?*, NEW YORKER (Oct. 18, 2021), https://www.newyorker.com/news/our-columnists/americas-workers-are-fighting-back-can-they-win [https://perma.cc/LA2Z-E4KY].

at the company in thirty-five years.[228] Workers rejected a tentative collective bargaining agreement that would have increased their pay by "five or six per cent," but with John Deere "making record profits, the striking workers" made further demands.[229] Granted, despite the increases in strikes, the number of employees involved in major work stoppages is still far below what it was between the 1940s and 1980s, when over a million employees routinely initiated work stoppages every year.[230]

The primary obstacle to an empowered labor movement remains management, which routinely uses harsh tactics to suppress union activity. For example, in 2021, employees at large corporations like "Amazon and Starbucks attempted to form unions" but "with mixed results."[231] Amazon surveilled employees, altered traffic signals to prevent labor organizers from interacting with employees after their shifts, and punished employees who protested "pandemic safety measures as inadequate."[232] That sort of conduct is not limited to Amazon. Employers were charged with violating federal law in four out of ten union representation elections the National Labor Relations Board supervised from 2016 to 2017.[233] Those charges included illegally firing or disciplining workers and "coercing, threatening, or retaliating against" them "for supporting a union."[234]

However, fissures between labor and management should not detract from fissures between union officers and rank-and-file members. Not only does employer resistance harm unions but also issues within unions themselves, including those involving "corruption and discrimination."[235] Union corruption in particular remains a high-profile issue despite significant gains in recent decades "to clean up historically corrupt unions like the Teamsters."[236]

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228. *Id.*; *see* Eliza Tebo Berkon, *The Pandemic Is Inspiring a Wave of Unionization Efforts. Will it Lead to Greater Protections?*, WAMU 88.5: AM. UNIV. RADIO (May 13, 2020), https://wamu.org/story/20/05/13/the-pandemic-is-inspiring-a-wave-of-unionization-efforts-will-it-lead-to-greater-protections [https://perma.cc/FC7V-AAAA].

229. Cassidy, *supra* note 227.

230. *See* Campbell, *supra* note 225.

231. Lizzie Widdicombe, *The Year in Labor Strife*, NEW YORKER (Dec. 31, 2021), https://www.newyorker.com/news/2021-in-review/the-year-in-labor-strife [https://perma.cc/WAC2-NQ9Y].

232. David Streitfeld, *How Amazon Crushes Unions*, N.Y. TIMES (Oct. 21, 2021), https://www.nytimes.com/2021/03/16/technology/amazon-unions-virginia.html [https://perma.cc/9GHH-M94D].

233. CELINE MCNICHOLAS ET AL., ECON. POL'Y INST., UNLAWFUL: U.S. EMPLOYERS ARE CHARGED WITH VIOLATING FEDERAL LAW IN 41.5% OF ALL UNION ELECTION CAMPAIGNS 2 (2019), https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns [https://perma.cc/7DNU-8VRQ].

234. *Id.*

235. Kate Andrias, *An American Approach to Social Democracy: The Forgotten Promise of the Fair Labor Standards Act*, 128 YALE L.J. 616, 689 (2019).

236. Michael J. Goldberg, *In the Cause of Union Democracy*, 41 SUFFOLK U. L. REV. 759, 764 (2008) (citing James b. Jacobs, Mobsters, Unions, and Feds: The Mafia and the American Labor

Most notably, in June 2021, Gary Jones, the former president of the United Auto Workers received "28 months in prison" after he pled guilty to "racketeering, embezzlement and tax evasion."[237] He, along with fifteen other union officials and car company executives, used "$1.5 million in union funds for lavish trips, golfing, alcohol and other luxuries."[238] Other present-day instances of corruption in the labor movement are well-documented.[239] The public has historically tended to report stronger negative associations with union leaders than with unions themselves, in part because of officers' ongoing reputation for corruption.[240]

For all the tangible obstacles workers face to assert themselves within their unions, it would be disingenuous not to stress the strategic incentive among political opponents of labor to overstate or refuse to contextualize internal dysfunction within unions. Organizations like the Center for Union Facts and the National Right to Work Committee premise their political messaging and organizing on the belief that unions are deeply corrupt and incompatible with individual rights.[241] A partner to the National Right to Work Committee, the National Right to Work Legal Defense Foundation, provides free legal counsel to employees who wish to contest "compulsory

Movement (2006)); *see also Are U.S. Labor Unions Making a Comeback?*, GALLUP (July 7, 2022), https://news.gallup.com/podcast/394574/labor-unions-making-comeback.aspx [https://perma.cc/PNQ5-HU6L] (stating corruption in modern unions is "relatively rare" and "incredibly exaggerated," particularly for unions with sufficient democracy for members to vote out representatives with whom they are dissatisfied).

237. Michael Wayland, *Second UAW President Sentenced to 28 Months in Prison in Union Corruption Probe*, CNBC (June 10, 2021, 11:31 AM), https://www.cnbc.com/2021/06/10/second-uaw-president-sentenced-to-prison-in-union-corruption-probe.html [https://perma.cc/77PX-9HUV].

238. *Id.*

239. *See, e.g.*, *Former Treasurer of the Detroit Fire Department Union Charged with Stealing Over $220,000 in Union Funds*, U.S. ATT'Y'S OFF. E. DIST. MICH. (Sept. 27, 2021), https://www.justice.gov/usao-edmi/pr/former-treasurer-detroit-fire-department-union-charged-stealing-over-220000-union-funds [https://perma.cc/E5V2-5MNB]; Tom Winter & Adiel Kaplan, *Philly Union Boss and Councilman Indicted in Corruption Probe*, NBC NEWS (Jan. 30, 2019), https://www.nbcnews.com/politics/justice-department/philly-union-boss-councilman-indicted-corruption-probe-n964731 [https://perma.cc/E7PY-8JLF].

240. *The Public and Labor Unions*, ROPER CTR., https://ropercenter.cornell.edu/public-and-labor-unions [https://perma.cc/FG3Q-DPL5].

241. *About the Center for Union Facts*, CTR. FOR UNION FACTS, https://www.unionfacts.com/article/about-us [https://perma.cc/JC7M-5FU4]; *About the National Right to Work Committee*, NAT'L RIGHT TO WORK COMM., https://nrtwc.org/about-the-national-right-to-work-committee [https://perma.cc/TQ75-GCR2]; *see also* Lyndsey Layton, *Center for Union Facts Says Randi Weingarten Is Ruining Nation's Schools*, WASH. POST (Sept. 24, 2014), https://www.washingtonpost.com/local/education/center-for-union-facts-says-randi-weingarten-is-ruining-nations-schools/2014/09/24/6443fed4-441e-11e4-9a15-137aa0153527_story.html [https://perma.cc/BC78-BMNE] ("The Center for Union Facts is part of a constellation of nonprofit groups [lobbyist Richard] Berman created to carry out corporate messages, including one that attacks health concerns about mercury in fish and another that has fought Mothers Against Drunk Driving over its campaign to lower the legal blood alcohol content limit.").

unionism abuses."[242] One of their previous clients was Mark Janus, the petitioner in the namesake U.S. Supreme Court case.[243] As *Janus* made clear in the context of public-sector unions, greater protection for workers' individual rights can function to weaken unions' ability to represent workers collectively.[244] Those who undertake judicial or other efforts to further democratize unions are likely to encounter a problem layered on top of the problem they seek to address: the risk they overcorrect to the advantage of management and those ideologically opposed to unions.

Given the strength and aggressiveness of anti-labor forces, union leaders might adamantly oppose expanding union voting rights under the LMRDA. However, doing so would be a tactical mistake. As labor activist Herman Benson stated aptly:

> Liberal political representatives are convinced that the public interest requires a strong labor movement, but that the labor movement today is too weak, and it has to be defended from any measure or attack that would undermine that strength. They are, therefore, so suspicious of any thing that smacks of criticism of unions that their knee-jerk reaction has been to reject any effort to strengthen workers' rights inside their unions as an attack on the labor movement. . . . [However], [t]he more union officials and their political allies resist fair play inside unions, the more they give ammunition to those who would curb unionism.[245]

Stronger voting protections under the LMRDA will not neutralize political opposition to unions, but as Benson's comments suggest, they will present another tool for organizers to rebut opposition and more quickly earn trust from workers. Those rebuttals have merit. Union democracy can not only prevent corruption, but also, create positive benefits for members and society. Protections, like a meaningful vote, can increase the effectiveness of unions' collective bargaining and political organizing and also set the

242. *Worker Profiles*, NAT'L RIGHT TO WORK: LEGAL DEF. FOUND., https://www.nrtw.org/profiles [https://perma.cc/RY6B-RFLU].

243. *Id.*; *see* Janus v. Am. Fed'n of State, Cnty, & Mun. Emps., Council 31, 138 S. Ct. 2448, 2461 (2018).

244. *See Janus*, 138 S. Ct. at 2485–86. In *Janus*, the Court overturned a state law that allowed public-sector unions to create security agreements that compelled non-member employees to pay an agency fee to the union. *Id.* at 2460–61, 2486. The court held the fee violated the First Amendment. *Id.* at 2486 ("Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed.").

245. *Hearing*, *supra* note 214 (statement of Herman Benson, Sec'y-Treasurer, Founder and Former Exec. Dir., Ass'n for Union Democracy, Brooklyn, N.Y.).

standard for unions as model civic organizations where persons build experience in democratic institutions that can extend into other areas of life.[246]

III. A MEANINGFUL VOTE DESERVES STRONGER PROTECTION FROM COURTS AND POLICY MAKERS

This Part contends federal courts should more aggressively protect a meaningful vote. First, the discrimination standard the Supreme Court articulated in *Calhoon* can align with and complement a meaningful vote standard. Second, a network of case law extending back to *Calhoon* persuasively clarifies the general types of behavior that should violate a meaningful vote standard. Lastly, case law and statute provide existing tools for courts to contain the potential excesses of a meaningful vote and prevent it from unduly interfering with the internal affairs of unions. Rules from case law could also present a roadmap for potential legislative protections for a meaningful vote as well.

A. A MEANINGFUL VOTE STANDARD CAN COMPORT WITH THE DISCRIMINATION STANDARD IN CALHOON

A meaningful vote standard can comport with the discrimination standard in *Calhoon*. *Bunz* presents a roadmap for courts to find discrimination when unions undermine a vote, but still grant universal suffrage. Because the *Bunz* court recognized discrimination can include diluting the strength of votes for certain members, it recognized discrimination can encompass a broader spectrum of behavior than directly taking away the right to cast a ballot.[247] Additionally, as *Bunz* demonstrated, overlap between discrimination and a meaningful vote is more pronounced than one might think. Behavior that undermines a meaningful vote is part and parcel with behavior that undermines democratic practices and procedures. When officers engage in such behavior, at worst, they have members in mind who do or are likely to pose an obstacle to an outcome they want a vote to produce (as opposed to members who do not pose such a threat) and act to weaken their power. At best, officers might not intend to discriminate but still execute policies that disproportionately degrade the democratic rights of certain members.

Because the kinds of discrimination officers might use to undermine a vote's meaning will vary, Title I must be expansive enough to capture a broad spectrum of discriminatory behavior, something cases like *Bevona*, *Cunningham*, and *Ackley* fail to recognize.[248] The Supreme Court's statement in *Calhoon* that discrimination is required for a voting rights violation under Title I does

246. *See* Goldberg, *supra* note 236, at 762–67 (arguing that "union democracy [is] an essential means toward achieving a particular end: a stronger labor movement that is not only more successful at the bread-and-butter functions of organizing and collective bargaining, but is also more effective representing working people in the boarder political area").

247. *See supra* Section I.C.2.

248. *See supra* Section I.C.3.

not itself pose an intractable obstacle to courts' exercise of a meaningful vote standard.

B. Existing Case Law Clarifies the Types of Behavior that Should Violate a Meaningful Vote Standard

Existing case law persuasively describes a limited universe of behavior that should violate a meaningful vote. Courts have correctly scrutinized instances, first, where unions change or violate voting procedures close to a vote itself; second, where unions issue rules or interpret their constitution or bylaws to make it extremely difficult logistically for classes of members to vote; and lastly, where unions denied certain members information prior to a vote. In the future, courts can employ and refine those precedents to simultaneously provide members with a remedy and develop legal rules that guide unions toward stronger internal democracy.

One category of behavior federal courts should scrutinize under Title I are changes or violations of voting procedures close to a vote. *Bunz* and cases like *Stettner* set a clear baseline standard to prohibit changes to voting procedures after a vote takes place.[249] However, federal courts should also have leverage to scrutinize procedural changes before a vote as well. In *Fulk*, even when the court assumed the union violated its bylaws for the purposes of summary judgment, it reasoned changes to facially neutral voting procedures before an election are not discriminatory because those who hold the losing position have "no independent identity" before a vote takes place.[250] However, the court's reasoning seems erroneous. Members of a union may speak openly about their positions before a vote and might even organize a campaign against a given proposal. Depending upon the particular facts in a case, the opposition's strength and identity will not necessarily be mysterious to officers. Therefore, shortly before a vote, a danger exists that officers may change voting procedures to disadvantage members whom they oppose, depriving them of an "opportunity to assess intelligently beforehand how much to campaign for their desired outcome."[251] Although any given voting procedure is likely to advantage a certain side in a vote, when officers abruptly change those procedures and deprive opposition of an opportunity to modify campaign or debate strategies, courts should at least have power to demand officers present a rationale for their changes and to evaluate whether the changes were avoidable, given their discriminatory effect.

Unions should also violate Title I when they violate or execute their constitution or bylaws to pose serious logistical barriers for a class of members to vote. *McGinnis* illustrated such a rule when it found that asking a class of members to travel hundreds of miles to Chicago for a vote was tantamount to

249. *See supra* Section I.C.2.

250. Fulk v. United Transp. Union, 81 F.3d 733, 737 (7th Cir. 1996); *see supra* Section I.C.3.

251. *Fulk*, 81 F.3d at 738; *see supra* Section I.C.3.

discrimination and a denial of equal voting rights.[252] Other indicia of a violation along these lines might be facts such as a failure to hold a vote in a handicapped-friendly facility, a failure to translate a ballot for members who speak a language other than English, holding a vote only during hours in which many members work, or to not arrange for remote voting during a crisis similar to the COVID-19 pandemic when members or their families might be especially vulnerable to serious illness.

Unions should not be able to refuse members equal information to cast a ballot. Case law presents some basis for applying a right to an informed vote when a union prevents equal access to information between different members. However, an informed vote standard would likely encounter challenges regarding discrimination when officers uniformly deny information to all rank-and-file members, unless courts further expand their conception of discrimination under Title I.

Unions should not be able to actively prevent members from receiving the same or similar amounts of information about a voting matter. A view along these lines has some case precedent. In *Sheldon*, the court did not apply the discrimination standard when it reasoned a union's refusal to provide "access to the membership mailing list" denied equal voting rights.[253] However, a finding of discrimination would still have aligned with the facts. By resisting the mailer, the officers in effect tried to maintain an imbalance of information between members. Officers discriminated against one class by helping to ensure it voted with less information about certain provisions than a second class that wanted to inform the first class about those provisions.

A finding of discrimination when a union prohibits access to information another class of members already accessed could apply to a broader array of circumstances than those in *Sheldon*. For example, in *Nagel*, where the union allegedly isolated members who asked questions about a pension plan, the union essentially engaged in a similar kind of behavior: to limit the spread of information among members about matters they were voting upon.[254] In doing so, the union effectively created one class of members with greater clarity on the pension than another class because it actively strained the ability of members who did not ask questions about the pension to access the same knowledge as members who did. There will always be some variation between union members about the extent they know and understand matters they vote upon. However, when the union itself is trying to create or sustain inequality between members about the degree to which they have information about voting matters, some inquiry into discrimination and the denial of a meaningful vote is warranted.

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252. McGinnis v. Loc. Union 710, Int'l Brotherhood of Teamsters, 774 F.2d 196, 201–03 (7th Cir. 1985); *see supra* Section I.C.2.

253. Sheldon v. O'Callaghan, 497 F.2d 1276, 1283 n.9 (2d Cir. 1974); *see supra* Section I.C.2.

254. *See* Nagel v. United Food & Com. Workers Union, Loc. 653, No. 18-cv-1053, 2019 WL 1025249, at *1, *7–8 (D. Minn. Mar. 4, 2019).

One potential obstacle to enforcing an informed vote is a lack of clarity over how the discrimination standard would apply when unions fail to disclose information to all members. *Blanchard* failed to acknowledge this problem when it stated a general proposition that the right to a meaningful vote is "not a deliberately misinformed vote"; however, at the same time, it did not point out any instance where the union discriminated between members.[255] To align a case like *Blanchard* with *Calhoon*'s discrimination standard would probably involve courts expanding how they understand discrimination under Title I. Specifically, courts would have to expand their conception of discrimination from officers treating classes of membership differently to officers treating membership differently as opposed to themselves, within limits.

One potential argument against a legal standard that finds discrimination when officers fail to disclose information to members as an entire class is that unequal information between members and officers is a natural byproduct of collective bargaining and other union activities. *Ackley*, for example, rested its holding largely on the rationale that officers' negotiations and informal understandings of collective bargaining agreements give them a breadth of knowledge that would be unrealistic for them to make wholly available to members. To an extent, the court's argument is sensible.[256] As elected representatives, officers should have substantial leeway to negotiate in the manner they think best without having to convey to union members every single piece of information they know.

However, once a constitution or bylaw promises a vote, officers' power to act unilaterally must dissipate, and the outcome they prefer cannot become an outcome they dictate. Therefore, the law should prevent officers from keeping certain information for themselves, to the detriment of voting members. Although officers and members should not be entitled to all the same information, they should nevertheless be entitled to some of the same information, and a denial of that information should constitute a denial of equal rights. Information pertinent to a vote that officers must already provide to members under statute, or a union's rules, bylaws, or constitution, could represent the scope of information officers must share with members before they cast ballots.

C. CASE LAW AND STATUTE PRESENT TOOLS TO CONSTRAIN A MEANINGFUL VOTE STANDARD

Case law and statute also present tools to prevent a meaningful vote from excessively interfering in internal union affairs. Specifically, courts have some history of articulating the rule that Title I never created positive voting rights outside the bounds of a union's constitution or bylaws and that courts should

255. *See* Blanchard v. Johnson, 388 F. Supp. 208, 214 (N.D. Ohio 1975), *aff'd in relevant part*, 532 F.2d 1974 (5th Cir. 1976); *supra* Section I.C.2.

256. *See supra* Section I.C.3.

generally defer to a union's interpretation of those documents. Also, under Title I, unions have some statutory ability to negate a members' claim if they failed to use internal procedures to invoke their voting rights prior to filing suit. Lastly, even if a union does discriminate, language under Title I allows a union to assert its discrimination was reasonable, given the practical realities of running a union.

To prevent excessive judicial interference in a union's internal affairs, a meaningful vote should hew closely to whether a union violated or executed its constitution or bylaws to discriminate against members. To begin, voting rights under Title I should be limited to voting rights under a union's constitution and bylaws. Some federal courts have articulated this rule in the past. In *American Postal Workers*, the D.C. Circuit stated Title I "accords no voting rights to" members, "but it does mandate that rights given to some members be available to all."[257] In *McGinnis*, the Seventh Circuit determined "[i]t does not appear" Title I "can create a right to vote where no express provision for such vote is provided in the bylaws or constitution."[258] A number of federal district courts, citing the same network of cases, have made similar assertions.[259]

Second, courts should adopt the view that, notwithstanding suffrage to all members, unions violate Title I when they contradict express provisions in their constitution or bylaws, and in a manner that was discriminatory.[260] However, a meaningful vote inquiry is trickier when officers act under an ambiguous provision in a constitution or bylaw that grants them vast discretion on how to conduct a vote. Like the court in *Marshall*, courts should generally defer to the union's interpretation of its governing documents.[261] But courts should shed deference once unions assume authority from their governing documents to blatantly discriminate. *McGinnis* is emblematic of such an approach. The union had discretion under its bylaws to decide how to execute a vote but used its discretion to issue a rule that had a discriminatory impact on members who lived away from Chicago.[262]

Another safeguard against Title I claims is judicial discretion to require union members to exhaust internal procedures within their unions prior to filing a claim in court. This rule has basis in the statutory text of the Title I

257. Am. Postal Workers Union, Headquarters Loc. 6885 v. Am. Postal Workers Union, 665 F.2d 1096, 1101 (D.C. Cir. 1981).

258. McGinnis v. Loc. Union 710, Int'l Brotherhood of Teamsters, 774 F.2d 196, 199 n.1 (7th Cir. 1985).

259. *See* Herrera v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., 858 F. Supp. 1529, 1542 (D. Kan. 1994); Dodd v. Fleming, 223 F. Supp. 2d 15, 21 (D.D.C. 2002).

260. *Bunz* provides precedent for such a rule. The union clearly contradicted its bylaws, and in doing so, undermined the voting power of those who supported the assessment. *See supra* Section I.C.2.

261. *See supra* Section I.C.3.

262. *See supra* Section I.C.2.

itself. Section 411(a)(4) provides that courts may require members to "exhaust reasonable hearing procedures" (not exceeding four months) prior to filing a "legal or administrative proceedings against" their unions.[263] To enforce the provision, courts consider: (1) whether "union officials are so hostile to the employee" they have no hope "to obtain a fair hearing"; (2) whether the internal appeals procedure would give the plaintiff the relief they seek; and (3) whether exhaustion of internal procedures "would unreasonably delay" a judicial hearing on the matter.[264] When a union moves for summary judgment, it must "establish the availability of adequate internal union remedies."[265] Afterwards, the opposing party has an opportunity to show "that exhaustion of remedies would have been futile."[266]

Federal courts have enforced 29 U.S.C. § 411(a)(4) to find unions not liable for a voting rights violation under Title I. In *Allied Workers Committee*, the court granted a union summary judgment because a member did not show that the internal appeals process with their union was "demonstrably futile."[267] Conversely, in *Berg*, another case that involved voting rights under Title I, a court found the internal appeals process was futile when a union member filed twelve protests over union conduct, "all of which were denied."[268] Strong enforcement of section 411(a)(4) would grant unions an opportunity to negate Title I claims if members did not give them an opportunity to correct voting deficiencies internally and as a result prevent litigation from escalating further.

Another barrier to union liability under a meaningful vote standard would be inquiry into the reasonableness of rules or regulations that limit equal voting rights, under 29 U.S.C. § 411(a)(1). The provision provides that even if a rule or regulation denies equal voting rights, the rule or regulation is permissible so long as it is reasonable.[269] To determine the question of reasonableness, one common test is to weigh the undemocratic effects of a rule or regulation against a union's interest in upholding it, interpreted through "the general policy against judicial interference in the internal

263. 29 U.S.C. § 411(a)(4).

264. Clayton v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., 451 U.S. 679, 689 (1981); Casumpang v. Int'l Longshoremen's and Warehousemen's Union, Loc. 142, 269 F.3d 1042, 1062 (9th Cir. 2001) ("Although *Clayton* involved an action brought pursuant to the Labor Management Relations Act, its three-factor test also applies to actions brought under the LMRDA." (citing Maddalone v. Loc. 17, United Brotherhood of Carpenters & Joinders of Am., 152 F.3d 178, 186 n.3 (2d Cir. 1998))).

265. *Casumpang*, 269 F.3d at 1062 (quoting Scoggins v. Boeing Co., 742 F.2d 1225, 1230 (9th Cir. 1984)).

266. *Scoggins*, 742 F.2d at 1230 (citing Keppard v. Int'l Harvester Co., 581 F.3d 764 (9th Cir. 1978)) (involving claim under the Labor Management Relations Act).

267. Allied Workers Comm. v. Allied Maint. Co., No. 84-cv-0570, 1984 WL 2742, at *5 (M.D. Tenn. Sept. 27, 1985).

268. Berg v. Strickland, 229 F. Supp. 2d 875, 879 n.1 (N.D. Ill. 2002).

269. 29 U.S.C. § 411(a)(1).

affairs of unions."[270] In *American Postal Workers*, the D.C. Circuit detailed the history and parameters of the reasonableness requirement, primarily citing cases where a union denied the right to vote outright.[271] Unions may, for instance, "limit voting to active members, or to those in good standing, and may exclude those who have not belonged to the union for the requisite period of time."[272] They may also "limit participation in a specific vote to those whose interests are affected."[273]

The reasonableness inquiry is another avenue through which the policy of minimal interference in union affairs can temper a meaningful vote standard. *McGinnis* represents a point of intersection between a meaningful vote inquiry and a reasonableness inquiry. To determine whether a discriminatory rule that mandated in-person voting for members was unreasonable, the court considered the strong interest members had in voting on amendments to their union's bylaws against the financial and administrative burdens for the union to provide mail ballots.[274] The court also weighed the union's interest in free discussion of ideas at meetings that mail ballots would undermine.[275] Although the *McGinnis* court did ultimately find the union's in-person voting requirement to be unreasonable,[276] the case illustrates that even if a court determines a union discriminated by undermining the meaningfulness of a vote, a union may still assert its discrimination was nevertheless reasonable, given financial, administrative, or other policy considerations.

CONCLUSION

The close relationship between the decline of union membership in recent decades and the decline of the middle class reinforces the vital importance of unions to the country at large.[277] As a result, labor law must continue to strive toward ensuring unions promote the collective interests of workers. Voting rights provisions under Title I of the LMRDA are part of the solution. Because the meaningful vote standard recognizes that denial of an equal right to vote is not limited to denial of a vote outright, it has greater capacity to protect against the variable types of voting rights discrimination union members might confront.

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270. McGinnis v. Loc. Union 710, Int'l Brotherhood of Teamsters, 774 F.2d 196, 200 (7th Cir. 1985).

271. Am. Postal Workers Union, Headquarters Loc. 6885 v. Am. Postal Workers Union, 665 F.2d 1096, 1103 (D.C. Cir. 1981).

272. *Id.*

273. *Id.*

274. *McGinnis*, 774 F.2d at 201–02.

275. *Id.* at 202.

276. *Id.* at 202–03.

277. Farber et al., *supra* note 222, at 1372.

A meaningful vote standard certainly liberalizes conceptions of voting rights discrimination under Title I, but those conceptions can retain limits. Courts can still confine themselves to enforcing voting rights a union's constitution or bylaws already confer. Also, courts can couple a meaningful vote standard with an expectation that members exhaust internal procedures prior to filing suit if they are able to do so. Lastly, courts can allow unions to engage in some limited and reasonable forms of discriminatory behavior. The legal mechanisms exist for courts and policy makers to strengthen a meaningful vote standard without excessive interference in unions' internal affairs. Both should seize opportunity to use those mechanisms for a worthy purpose: to protect democracy in institutions that can significantly improve life for workers and their families.