Clarification of Title IV of the Labor-Management Reporting and Disclosure Act: Toward More Democratic Elections

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NOTE
Clariﬁcation of Title IV of the Labor-Management
Reporting and Disclosure Act:
Toward More Democratic Elections

INTRODUCTION

The strength of a chain depends on the condition of its weakest link.
Similarly, the democratic quality of a society is largely determined by
the kind of democracy that prevails in its component organizations.
The fact that trade unions today represent an important ‘link’ in
American society may explain the concern of the public over the kind
of democracy that exists in unions. A particularly important aspect of
union democracy is the process through which membership elects its
officers.1

In 1959, the 86th Congress passed the Labor-Management Reporting
and Disclosure Act (LMRDA)2, as a response to the increasing impor-
tance of the labor movement in the United States. The Act established
rules which govern the internal affairs of labor organizations,3 as well as
labor-management relations.4 The purpose of including the former in the
federal statute is to safeguard the rights of union members,5 while preserv-
ing internal union democracy against assaults of autocratic union man-

1. Rezler, Union Elections: The Background of Title IV of LMRDA, Symposium on the
(footnote omitted).
3. Many commentators have noted that incident to governing the internal affairs of labor
organizations, the Act seeks to weed out dishonest practices in labor-management relations which
tend to corrupt union ofﬁcials by requiring union ofﬁcers to observe high standards of responsibility
and ethical conduct in union affairs. See, e.g., Cox, Internal Affairs of Labor Unions Under the
Labor Reform Act of 1959, 58 Mich. L. Rev. 819 (1960); Coleman v. Brotherhood of Ry. and
S.S. Clerks, 228 F.Supp. 276, 283 (S.D.N.Y. 1964), aﬀ’d, 340 F.2d 206 (2nd Cir. 1965). The
congressional declaration of purpose supports such allegations (i.e., the statute was enacted to
eliminate or prevent improper practices on the part of labor organizations, employers, labor relations
consultants and their ofﬁcers and representatives which distort and defeat the policies of LMRDA. 29
U.S.C. §401(b) (1976). See also Highway Truck Drivers and Helpers Local 107 v. Cohen, 182 F.
(LMRDA came in the wake of congressional ﬁndings of crime and corruption in the labor-
management ﬁeld).
4. Cox, supra note 3, at 819.
agement. This purpose is accomplished by guaranteeing members equal rights and privileges in the nomination and election of union officials; freedom of speech and assembly; and freedom from arbitrary increases in dues and assessments. The LMRDA should be interpreted in accordance with this legislative purpose. However, the diversity of interpretations of Title IV of the LMRDA, which regulates union elections, leaves many questions unanswered. The high degree of ambiguity in interpreting §401(e) of Title IV has permitted a maximum amount of judicial discretion in the handling of cases. This note examines one, although not the exclusive, interpretive problem concerning the nomination of candidates and the eligibility of union members to be candidates and to hold offices.

An analysis of the relevant legislative history of the LMRDA and its effect on union democracy will be presented in support of the conclusion that §401(e) of Title IV can and should be clarified in order to offer more substantive protection to valid union elections. The subsequent sections discuss incidents deemed to be violative of the electoral requirements outlined in the Act and how these illogical, inconsistent interpretations can be resolved.

**LEGISLATIVE HISTORY OF THE LMRDA**

Democracy in a political sense implies: "(a) control of governing decisions by those affected and (b) a decent respect for the fundamental rights of individuals and minorities, not only by the individuals in power but also by the ruling majority." Viewed in this light, the heart of union democracy lies in the election of officers. It was upon this premise that the "Elections" title of LMRDA came into existence.
The legislative history of Title IV can be divided into two distinct periods. The first time frame was characterized by state governments regulations to hamper the undemocratic conduct of some union elections. This state regulation arose due to congressional disinterest in interfering with union internal affairs. In contrast, the second period brought federal intervention in the internal affairs of unions and witnessed the passage of federal legislation regarding union administration and election procedures.

State Legislation

Prior to the late 1950’s, Congress as a matter of policy emphatically refused to interfere with the regulation and adjudication of internal affairs of unions. Congressional deference continued despite the surge of union membership in the late 1930's and early 1940's, allowing organized labor to become a powerful force in our society. With union growth came the problems of union democracy, and a great deal of public attention.

The American Civil Liberties Union was the first to protest union deprivation of the rights of their individual members. In 1947, and again in 1949, they submitted Trade Union Democracy Bills to the House Committee on Education and Labor. These bills outlined prevalent undemocratic practices and promulgated recommendations to promote...
Despite the importance of such a scheme, Congress, unfortunately, never seriously considered it.21

The intentional absence of congressional legislation, coupled with federal courts' grave reluctance to exercise their jurisdiction in union election cases, left the regulation of union democratic procedures in the hands of state legislatures and courts. Most states viewed the unions as voluntary associations, a category similar to church groups or fraternal organizations.22 Therefore, the states believed unions should be granted an immense amount of independence in supervising their internal affairs.23 For this reason, state legislatures were equally reluctant to interfere with the internal activities of unions.24

In 1943, five states passed legislation governing the internal operation of unions in various respects, including provisions for the election of officers.25 There had been speculation that the ultimate purpose of some of these laws was to weaken unions, not to purify them.26 In recognition

20. Id.at 279. The chief complaints by rank and file members concern lack of opportunity for full participation in the conduct of union's affairs, tending to the perpetuation in office of entrenched officials; the difficulty of organizing an opposition to the leadership; the lack of adequate machinery for review of expulsions and suspensions; the penalties imposed by varied means on critics of the leadership; the lack of control over expenditures and assessments in many unions; discrimination in assignment of jobs; and exclusions from membership based on race, sex, or political connections.

21. Rezler, supra note 1, at 475. It should be noted, however, that the concern over indifference to democracy within labor organizations and the rights of minority union members did not go unnoticed: "Two unions, the Upholsterers' International Union and the United Automobile Workers, reacted by creating impartial appeal boards to review disciplinary action by the international against individual members or a local union." Cox, supra note 3, at 820. These union appellate tribunals represented the first step toward independent judiciary within labor unions. Id. Further, it has been observed that Congress did include certain provisions relating to internal union affairs in the Taft-Hartley Act.

These included the proviso in section 8(a)(3) prohibiting discharge of an employee under a union shop agreement for any reason other than the failure to tender initiation fees and periodic dues; section 8(b)(5) making it an unfair labor practice for a union to charge an employee under a union shop agreement an initiation fee found by the NLRB to be "excessive or discriminatory" . . .

Murphy, supra note 17, at 280. These provisions represented the first instance of national regulation of internal union affairs, despite the fact that they had very little effect on union democracy. Id.

22. Rezler, supra note 1, at 479.

23. Id.

24. Id.

25. Id. at 476. The five states passing such legislation were Colorado, Florida, Kansas, Texas and Minnesota. Only Minnesota's "Union Democracy Act" was entirely devoted to the regulation of union elections. The remaining statutes regulated other internal affairs as well as election processes. For further discussion, see Colo. Stat. Ann. c.131 (1943); Fla. Stat. Supp. 481.09 (1947); Kans. Sess. Laws c.191, §44-801-15 (1943); Texas Gen. and Special Laws c.104 (1943); Minn. Sess. Laws c.625-S.F.No. 1144 (1943).

26. Murphy, supra note 17, at 280.
of this speculation, unions attacked the constitutionality of some of these provisions to reflect their animosity towards judicial interference. Ultimately, some state courts held the election clauses to be unconstitutional, while in others, mainly the agricultural states where the number and importance of unions was negligible, the provisions remained valid.

Notwithstanding the state legislatures’ attempts to govern unions’ internal processes, there was little enforcement of or litigation concerning these laws. The state courts afforded the main source of legal relief. The recognition of common law in this area did little to rectify the lack of federal power. Various court rulings were uncertain and inadequate, while inconsistent interpretations created confusion. The administration of claims, which occurred primarily through individual civil suits, was burdensome and costly for the aggrieved individual.

Towards Federal Intervention

Acceptance of Federal Legislation

In 1957, as a response to mounting criticism of the abuses of power by labor organizations, the Executive Council of the AFL-CIO approved six Ethical Practical Codes. The sixth code concerned union democratic processes. The purpose of this code was to ‘restate the principles which
should govern all free and democratic unions and to rededicate the labor movement to the preservation of these principles." The code itself did not promulgate legislative intervention regarding union democracy. Rather, its aim was to leave the internal affairs of unions in the hands of the unions themselves, and to permit them to institute self-corrective action.

These six Ethical Practice Codes were inadequate in eliminating public and congressional dissatisfaction with the disclosure of union corruption, which included certain malpractices in their election procedures. As a result of the Ethical Practice Codes' inadequacies, there was gradual acceptance of federal intervention in the internal affairs of labor organizations. Two main sources provided information regarding these election malpractices: (1) surveys of union constitutions regulating election procedures conducted by the Bureau of Labor Statistics and the National Industrial Conference Board; and (2) the investigations by the Select Committee on Improper Activities in the Labor or Management Field, popularly known as the McClellan Committee.

Union Constitution Surveys

In 1958, the Bureau of Labor Statistics studied various union constitutions, specifically their provisions regulating voting procedures and the

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5. Officers of the AFL-CIO and of each affiliated international or national union should be elected, either by referendum vote or by the vote of delegate bodies. Whichever method is used, election should be free, fair and honest and adequate internal safeguards should be provided to ensure the achievement of that objective.

7. The appropriate officials of the union and such bodies which are given authority to govern a union’s affairs between conventions should be elected, whether from the membership at large or by appropriate divisions, either by referendum vote or by the vote of delegate bodies.

8. Membership meetings of local unions should be held periodically with proper notice of time and place.

9. Elections of local union officers should be democratic, conducted either by referendum or by vote of a delegate body which is itself elected by referendum or at union meetings.

10. The term of office of all union officials should be stated in the organization’s constitution or by-laws and should be for a reasonable period, not to exceed four years.

Rezler, supra note 1, at 487–88 (quoting UNITED AUTOMOBILE WORKERS UNION, A MORE PERFECT UNION... 30-31 (1958)).

34. Murphy, supra note 17, at 280, 281.

35. Rezler, supra note 1, at 488. Rezler also comments: Nevertheless, the Code affected subsequent legislation in two ways: First, by its very existence the Federation tacitly admitted the need for the correction of certain election practices; second, the recommendations of the Code served as a source for legislation, and also as an indicator as to what reforms organized labor would accept without major resistance.

Id.

36. Id. at 482.
frequency of elections of international presidents.37 Included in their survey were 111 national and international unions, each having at least 10,000 members.38

The study of the voting procedures revealed that only thirty-one of the 111 constitutions surveyed explicitly required the use of secret ballots for the election of the union president. In the remaining eighty unions, thirty-one constitutions did not define any voting procedures; twenty-six union constitutions did not stipulate what type of ballot to be used in elections; and the remaining twenty-three unions set forth an alternative method of voting.39

The presidential election provisions studied did not reveal a consistent pattern regarding the frequency of these elections.40 In total, ninety-five percent of the unions surveyed held presidential elections at least every five years.41

The National Industrial Conference Board examined the constitutional provisions of 194 international unions regulating the frequency of their conventions.42 Despite the variations in their findings,43 ninety-two percent of all unions under surveillance held conventions at least every five years.44

The importance of these studies was not readily apparent, for neither indicated any urgent need for federal intervention in union election procedures. However, coupled with the findings of labor economists such as Philip Taft, the fallacies existing in the democratic processes of labor organizations came to light. During the period 1900–1948, Taft examined thirty-four international unions and the election of their officers.45 Taft found that the majority of presidential elections were uncontested, due either to lack of interest or "the successful political machining of the incumbent officers."46 Lack of opposing candidates caused similar findings in the elections of other union officials.47

37. Id. at 483.
38. Id.
39. Id.
40. Id. "Of the one hundred and eleven unions studied, six elected its president in every year, forty-two in every second year, fourteen in every third year, thirty-four in every fourth year and ten elected their presidents in every fifth year." Id.
41. Id.
42. Id.
43. Id. "... 26.3 percent held their convention yearly, 33.5 percent every other year, 11.3 percent every third year, and 13.9 percent every fourth year. Only 8.1 percent of the unions studied held a convention either less frequently than every five years or had no constitutional provision for holding a convention." Id.
44. Id.
45. Id.
46. Id.
47. Id.
McClellan Committee

During the first session of the 85th Congress, the Senate Select Committee of Improper Activities in the Labor or Management Field was set up under Senate Resolutions 74 and 221.48 These Resolutions instructed the McClellan Committee to investigate the improprieties of both labor and management organizations. However, in reality, the latter were only studied with respect to their associations with labor organizations.49

The Committee commenced its investigations in 1957 and issued its first Interim Report in March, 1958.50 The report admitted that the majority of the various local and regional units of approximately ten international unions studied were operated honestly and democratically.51 However, in four of the international unions, a substantial lack of democratic processes in the election of officers was revealed.52

Specifically, the report stated that in the unions studied, constitutions had been perverted or ignored; one man dictatorships had thrived; through fear, intimidation and violence, the rank and file member had been shorn of a voice in his own union affairs; and that use of the secret ballot had been denied in many cases.53

These findings were sufficient to establish support for the demand that all unions, corrupt or otherwise, be subject to restrictions to prevent them from being utilized for selfish and unorthodox purposes.54 The Committee itself recommended legislative action to establish basic standards of democratic procedure, including periodic elections and use of a secret ballot.55 Thus, the institution of this Committee represented the most dramatic development towards federal intervention in the internal affairs of unions.56

48. Id. at 484.
49. Id.
50. Murphy, supra note 17, at 281.
51. Id.
52. Rezler, supra note 1, at 484. It should be noted that initially the Committee's prime concern was dishonest union officers misappropriating funds, illicit profits, and violence and racketeering within unions. Subsequently, they also focussed on secondary boycotts and organizational picketing. However, upon further investigation, the Committee found evidence of internal misgovernment. Cox, supra note 3, at 820.
53. Murphy, supra note 17, at 281.
55. Rezler, supra note 1, at 486. However, the idea of federal intervention was not unanimously supported. For example, Senator McNamara dissented in the Committee's First Interim Report because he did not feel the evidence was of such a sufficient nature to mandate the imposition of federal legislation. Id.
56. Murphy, supra note 17, at 281.
Recommendations for Democratic Reform

In addition to the McClellan Committee's recommendations, the American Civil Liberties Union issued a new detailed labor union "Bill of Rights" which included a section dealing with the freedom of elections and balloting.¹⁷ The recommendations for democratic union reform included therein were published in March, 1958, and were more detailed and concrete than those of the McClellan Committee.⁵⁸ The importance and impact of the suggestions espoused by the ACLU would be seen later in subsequent labor reform bills, for the sponsors of those various bills incorporated many of these same provisions.⁵⁹ Consequently, traditional concepts of union morality and conduct were taken out of union hands and placed in the federal forum.

Federal Intervention

An aroused nation spurred Congress into abandoning its reluctance to intervene in the internal affairs of labor organizations. Various bills were introduced in the 85th Congress aimed at regulating union democratic processes; these convinced labor leaders that federal legislation was

¹⁷ Rezler, supra note 1, at 487. The following provisions of the Bill of Rights referred to union elections:

1. In a membership organization, the freedom of election and balloting is the ultimate and most important freedom in the democratic conduct and control of the group. Therefore:

   (a) Every member shall have the right to vote, on an equal basis with all other members, without fear of reprisal.

   (b) Other than voting in a representative body (e.g., a convention, or a shop stewards' council or a city labor council) where the individuals represented have the right to know how their delegates voted, the secrecy of ballot shall prevail, and an honest count, free from intimidation shall be guaranteed through the presence at the count of opposing candidates, or their representatives, and, if necessary, through the supervision of an impartial, outside agency. This supervision should be required if a petition containing the signatures of at least ten per cent of the union membership is presented.

   (c) Any member of the union shall have the right to stand for and hold office, subject to fair qualifications uniformly imposed. No elected officer shall be removed from office except after reasonable notice and a fair hearing on the charges.

2. To insure proper discussion and review of union politics, there shall be regular meetings at reasonable intervals and elections with reasonable and uniform notice to union members.

   (a) Every national labor organization shall meet in open, national convention within a reasonable period of time (such as at least once every four years) for the purpose of a full and open discussion of union policy. The election of officers shall take place at this convention or through a referendum.

   (b) Delegates to convention shall be elected by the membership they represent and their election shall be held in a manner clearly prescribed in the union constitution, and adequate notice of such election must be given to each member.

Id. at 487 (quoting AMERICAN CIVIL LIBERTIES UNION "BILL OF RIGHTS" (1958)).

⁵⁸ Rezler, supra note 1, at 487.

⁵⁹ Id. at 488.
inevitable. Of these bills, the most comprehensive was introduced by Senators Kennedy and Ives in June, 1958. Union election procedures were provided for in Title III of the Kennedy-Ives bill. Labor organizations were required under this proposal to hold periodic elections of union officers, either by secret ballot or by a convention of delegates chosen by secret ballot. In addition, the bill established rules which sought to guarantee each member: (1) an opportunity to vote and nominate candidates without coercion or restraint; and (2) advance notice of the time and place of the election. Ballots and all other records pertaining to the election were to be preserved and union treasury money was not to be used for the promotion of candidates. Enforcement of these rules was to be vested in the Secretary of Labor, who had the right to order and conduct a new election if the first was deemed illegal by a federal court.

Senator McClellan proposed various additional provisions, including the barring of criminals from holding union office and designating various offenses against unions as federal crimes. The Senate Labor Committee combined all of the suggested provisions and presented it to the Senate for approval.

The Kennedy-Ives bill was passed by the Senate by an overwhelming majority of 88 to 1 without substantial change. However, in the summer of 1958, the House abandoned the bill, due in part to the strong opposition of both labor unions and various business groups.

When the 86th Congress convened in January, 1959, a new bill sponsored jointly by Senators Kennedy and Ervin was introduced. Its

60. Cox, supra note 3, at 821.
61. Rezler, supra note 1, at 489. The policy behind this bill was espoused in sections 2(a) and (b):

[I]t is essential that labor organizations . . . and their officials adhere to the highest standards of responsibility and ethical conduct of the internal affairs of their organizations particularly as they affected labor management relations . . . The Congress further finds from recent investigations in the labor and management fields a number of instances of breach of trust, corruption, disregard of the rights of individual employees and other failures to observe high standards of responsibility and trust, which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees.

Id.

62. Id.
63. Cox, supra note 3, at 821.
64. Id.
65. Rezler, supra note 1, at 489-90.
66. Id. at 490.
67. Cox, supra note 3, at 821.
68. Id.
69. Id. at 822.
70. Id.
Labor-Management Reporting and Disclosure Act

... election provisions were analogous to those in Title III of the defunct Kennedy-Ives bill. The Senate Labor Committee initiated hearings and the changes made resulted in more detailed and better organized regulations, especially in the title governing union election procedures. On April 25, 1959, the Senate passed the amended version of the Kennedy-Erwin bill.

Concurrent hearings on the House of Representatives' versions of a labor reform bill were held by a joint subcommittee of the House Committee on Education and Labor. The legislators were debating over three major proposals. The first, known as the Shelley bill, was a moderate bill supported mainly by the labor movement and representatives regarded as friendly to organized labor. The Elliot bill, slightly more stringent, was based primarily upon the Senate's Kennedy-Ervin bill. However, it did contain some differences in important aspects of the "Bill of Rights." The introduction of provisions establishing the fiduciary duties of union officials and a federal remedy for violations of this duty proved to be the bill's most important contribution. The strictest of the three proposed was the Landrum-Griffith bill, which combined the Elliot provisions dealing with reporting and disclosure, elections, trusteeships, and fiduciary duties of union officials, with the Senate version of the Bill of Rights. In addition, the bill promulgated new restrictions upon secondary boycotts and organizational picketing. The House ultimately passed the Landrum-Griffith bill.

A Conference Committee was established, and within two weeks the sharp differences between the House and Senate regarding some details of the regulation of internal union processes were resolved. The Conference Report agreed to was adopted in both houses overwhelmingly and became known as the Labor-Management Reporting and Disclosure Act of 1959. The federal government had finally assumed the primary responsibility for the policing of unions.

71. Rezler, supra note 1, at 490.
72. Cox, supra note 3, at 822.
73. Rezler, supra note 1, at 492.
74. Id.
75. Id. at 493.
76. Cox, supra note 3, at 822.
77. Id.
78. Id.
79. Id. at 822-23.
80. Id. at 823.
81. Id.
82. Smith, supra note 30, at 197.
PROBLEMS WITH TITLE IV

The purpose of Title IV is to ensure "free and democratic" union elections. The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its longstanding policy against unnecessary governmental intrusion into internal union affairs. The congressional intent to accommodate both of these purposes is reflected in §401(e), which provides in pertinent part:

In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof.

This section, while requiring labor organizations to protect the individual rights of union members in the election processes, does not render unions powerless to restrict candidacies for union office. The union has the right to impose "reasonable qualifications" upon its members. The obvious question raised by this section is, what constitutes "reasonable qualifications uniformly imposed"?

The language of the statute, when interpreted liberally, reflects the historical reason for the clause, namely, to ensure "free and democratic" union elections. Thus, to determine whether a requirement is a "reasonable qualification" within the meaning of §401(e), it must be measured in terms of its consistency with such historical purpose. Notwithstanding the specific wording of the statute, it has been held that Congress did not intend that the authorization in §401(e) of "reasonable qualifications uniformly imposed" be given a broad reach. Unfortunately, this does little


87. Steelworkers, 429 U.S. at 308.

88. Hotel Employees, 391 U.S. at 499.

89. Id. "This conclusion is buttressed by other provisions of the Act which stress freedom of
to clarify the meaning and scope of the clause. It remains unsatisfactorily vague; what is deemed a "reasonable qualification" in some contexts, is not necessarily a "reasonable qualification" in others.

Courts have used a policy analysis approach to rationalize distinctions. The LMRDA was expressly enacted to curb any unduly restrictive candidacy qualifications which may result in limiting members' eligibility for office, or limiting the right to vote for candidates of one's choice or the threat of self-perpetuating incumbency, be it benevolent or malevolent. It is unclear how "unduly restrictive" the requirement must be before the election will be voided and a new one ordered under the supervision of the Secretary of Labor.

To aid in clarifying the clause, it has been held that "A classification 'must be reasonable, not arbitrary, and must rest upon some ground or difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" Therefore, if a requirement is questionable, the reasons for upholding it and the election held must be weighed against the underlying policy of §401(e): "free and democratic" union elections. As with other balancing tests, whether the quantum of evidence offered establishes a prima facie violation ultimately depends upon the trier of fact.

**Title IV and the Courts: Case Law Confusion**

The Supreme Court's interest in preserving "free and democratic" union elections within the bounds of the "reasonable qualifications"...
clause of §401(e) is exemplified in *Wirtz v. Hotel, Motel & Club Employees Union, Local 6.* In *Hotel Employees,* the Court addressed the question, “what constitutes a reasonable qualification?” by analyzing a bylaw which limited eligibility for major elective offices to union members who hold or have previously held elective office. The Secretary of Labor challenged the union’s bylaw as not being within Congress’ intent of a “reasonable qualification” when it passed §401(e) of the Act and, therefore, sought to set aside the May 1965 election. The District Court held that the prior office requirement was not reasonable, but refused to set aside the election because it could not be found that the bylaw in effect at the time of the election “may have affected the outcome.” The court granted an injunction against enforcement of the bylaw by the union in future elections. The Court of Appeals for the Second Circuit reversed and set aside the injunction, stating that the bylaw was reasonable and not violative of §401(e).

The Supreme Court held the restriction to be an unreasonable qualification and that its enforcement “may have affected the outcome” of the election. The Court sought to define the parameters of “reasonable qualifications” consistently with the goals established in the legislative history of §401(e) of the Act. In determining guidelines for interpretation of “reasonable qualifications” the Court held that Congress intended the clause to be interpreted narrowly; thus the bylaw “must be measured in terms of its consistency with the Act’s command to unions to conduct

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94. Id. at 493–94.
95. Id. at 494 n.1.
96. 391 U.S. at 495.
97. Id.
98. Id. “The court found it unnecessary in that circumstance to decide whether enforcement of the bylaw at the election may have affected the outcome.” Id.
99. Id. Thus, the Secretary of Labor was entitled to an order directing a new election under his supervision. Id.
100. Id. at 496–99. See also supra notes 11–82 and accompanying text.
This language indicates that a balancing test be utilized in evaluating the scope of restrictions allowable under §401(e).

Consistent with these espoused principles, the Hotel Employees Court considered this election to be seriously impaired because the candidacy qualifications substantially depleted the number of members who might run in opposition to the incumbents. The consequence of such a bylaw is that it places control in the incumbents' hands. This is precisely what Congress was legislating against when it enacted the LMRDA.

The Local attempted to defend this potential self-perpetuating incumbency as a "reasonable qualification" by showing the incumbents' impressive record of managing the union's affairs. However, the Court rejected the union's argument as unpersuasive because "Congress designed Title IV to curb the possibility of abuse by benevolent as well as malevolent entrenched leaderships." In addition, the union tried to justify its restriction by claiming it was a means of limiting holders of important union offices to those members who have knowledge of the union's problems obtained through service in other offices. The Second Circuit accepted this rationale; the Supreme Court did not. The Court rejected the argument because it assumed that the members were unable to distinguish those candidates who are qualified and those who are not. This belief is inconsistent with Congress' model of democratic elections where voters are assumed to exercise common sense and judgment in electing their representatives.

The court stated:

"It is not self-evident that basic minimum principles of union democracy require that every union entrust the administration of its affairs to untrained and inexperienced rank and file members . . . It does not seem to us to be surprising that the union should hesitate to permit a cook or a waiter or a dishwasher without any training or experience in the management of union affairs to take on responsibility for the complex and difficult problems of administration of this union . . . We do not believe that it is unreasonable for a union to condition candidacy for offices of greater responsibility upon a year [sic] of the kind of experience and training that a union member will acquire in a position such as that of membership in Local 6's Assembly."
Local was not “faithful to its own premise” since members without prior office-holding experience could be appointed to fill a vacancy in any office.\textsuperscript{110}

Hotel Employees provides a framework for the interpretation of the “reasonable qualifications” clause contained in §401(e) of the Act. The principles espoused, however, did little to clarify the clause: they did not define the necessary elements for a qualification to be deemed “reasonable.” The following cases demonstrate the difficulties in applying these policies and the conflicting interpretations that have resulted in courts trying to further define the clause.

The 1977 decision of Local 3489, United Steelworkers of America v. Usery\textsuperscript{111} further illustrated the Supreme Court’s unwillingness to uphold a qualification it felt had a substantial anti-democratic effect which outweighed the interests urged in its support.\textsuperscript{112} The provision at issue in the union’s constitution was a meeting-attendance requirement that limited eligibility for local union office to members who had attended at least one-half of the Local’s regular meetings for three years prior to the election.\textsuperscript{113} Members were excused if they were prevented from attending due to union activities or working hours.\textsuperscript{114} The Secretary of Labor sought to invalidate the 1970 election\textsuperscript{115} because the bylaw was not a “reasonable qualification” and was therefore violative of §401(e) of the LMRDA.\textsuperscript{116} The District Court for the Southern District of Indiana dismissed the complaint, refusing to find a violation of the Act.\textsuperscript{117} The Seventh Circuit reversed,\textsuperscript{118} holding that:

\begin{quote}
[T]he failure of 96.5\%\textsuperscript{119} of the local members to satisfy the meeting-attendance requirement, and the rule’s effect of requiring potential insurgent candidates to plan their candidacies as early as eighteen months in advance of the election when the reasons for their opposi-
\end{quote}

\begin{footnotes}
\item[110.] \textit{Id.}
\item[111.] 429 U.S. 305 (1977).
\item[112.] \textit{Id.} at 310.
\item[114.] \textit{Id.} at 306-07.
\item[115.] \textit{See supra} note 91.
\item[116.] 429 U.S. at 306-07.
\item[117.] \textit{Id.} at 307.
\item[118.] Brennan v. Local 3489, United Steelworkers of Am., 520 F.2d 516 (7th Cir. 1975).
\item[119.] 429 U.S. at 308. At the time of the challenged election, there were approximately 660 members in good standing, but only twenty-three of these members were eligible to hold office. Of these twenty-three, nine were incumbents. \textit{Id.} at 307-08.
\end{footnotes}
tion might not have yet emerged, established that the requirement has a substantial antidemocratic effect on local union elections.

Despite the considerable factual differences from Hotel Employees, the Supreme Court invalidated the Steelworkers’ bylaw for essentially the same public interest principles outlined therein. The Court dismissed petitioners’ contention that the bylaw in Hotel Employees, which was violative of §401(e), was significantly different from their meeting-attendance requirement. Under the Steelworkers’ rule, petitioners argued, a member who wished to be a candidate could assure his own eligibility by merely following the mandated procedure of meeting attendance; under the Hotel Employees bylaw, the restriction disqualified a category of members who could not assure their own eligibility for union office because others controlled the criterion for eligibility. The effect of the latter provision was predictable at the time the bylaw was enacted. Further, according to the Hotel Employees Court, the rule was deliberately designed to entrench union leadership. No member of the Steelworkers union was precluded from establishing eligibility. In addition, the effect of this rule could not be predicted, for any member who had the requisite interest in the union’s affairs was eligible to seek office.

The Supreme Court conceded that the “LMRDA does not render unions powerless to restrict candidacies for union office”, but contended that this bylaw, in requiring a member to decide upon potential candidacy at least eighteen months in advance, has a substantial antidemocratic effect. Thus, this requirement might serve to discourage candidates from seeking election and thereby “impair the general membership’s freedom to oust incumbents in favor of new leadership.” To rebut this, petitioners argued that the rule was “reasonable” because it

120. Id. at 308. “Regular meetings were held on a monthly basis. Thus, in order to attend half of the meetings in a three-year period, a previously inactive member desiring to run for office would have to begin attending 18 months before the election.” Id. at n.5.
121. Id. at 308.
123. In its decision, the Steelworkers Court relied on the objective of Title IV to “protect the rights of rank-and-file members to participate fully in the operation of their union through processes of democratic self-government, and, through the election process, to keep the union leadership responsive to the membership.” 429 U.S. at 309 (citing Hotel Employees, 391 U.S. at 497).
124. 429 U.S. at 310.
125. Id.
126. Id. at 315 (Powell, J., dissenting).
127. Id.
128. Id. at 316 (Powell, J., dissenting).
129. Id.
130. Id. at 308.
131. Id. at 311.
132. Id.
encouraged attendance at union meetings and assured more qualified officers by limiting election to those who had demonstrated an interest in union affairs and were familiar with union problems. The Court found this argument unpersuasive. The dissent noted, however, that while these were legitimate and meritorious union purposes, it may be argued that requiring attendance at eighteen of thirty-six meetings before an election goes farther than is necessary to attain these goals. "But this is a 'judgment call' best left to the unions themselves absent a stronger showing of potential for abuse than has been made..." This view is consistent with Congress' intent not to interfere needlessly, but is inconsistent with the majority in Steelworkers.

However, in accordance with the legislative history of §401(e), the Court recognized that the reasonableness of any meeting-attendance requirement must be analyzed in light of all the circumstances of a particular case, including the impact of the rule. The majority here skirted some crucial points in this case. "There was no history of entrenched leadership and no evidence of restrictive union practices precluding free
and democratic elections.\textsuperscript{139} The record reflected that during the preceding ten years, five different presidents had been elected and in the course of four separate elections, approximately forty changes in officers had taken place.\textsuperscript{140} Finally, the Court relied heavily on the fact that 96.5\% of the union membership was excluded from running for office and as such, severely restricted the free choice of the membership.\textsuperscript{141} The Secretary of Labor argued that "Hotel Employees enunciated a per se 'effects' rule, requiring invalidation of union elections whenever an eligibility rule disqualifies all but a small percentage of the union's membership. Although the Court today does not in terms adopt a per se 'effects' analysis, it comes close to doing so."\textsuperscript{142} This "effects" test was to be one factor in assessing "reasonableness", not the exclusive factor; as the dissent points out, it is ambiguous and could invalidate almost any attendance qualification.\textsuperscript{143}

In using the term "reasonable," the Court contends that Congress contemplated a flexible rule.\textsuperscript{144} However, the majority provides little insight in interpreting the election statute and analyzing this "flexibility" issue. Rather, the Steelworkers Court viewed this flexibility as an overriding factor in order to obtain the same result as Hotel Employees, when the facts indicate that similar conclusions may not have been warranted. In \textit{Schultz v. Local 1291, International Longshoremen's Association},\textsuperscript{145} the court held that the union bylaw allocating union offices along racial lines\textsuperscript{146} was invalid as an unreasonable qualification on the right of union members in good standing to be candidates and to hold office.\textsuperscript{147} Relying on the premise of Hotel Employees that "'reasonable qualifications uniformly imposed' should not be given a broad reach,"\textsuperscript{148} the court asserted that the deprivation of 50\% of the union membership from

\begin{enumerate}
\item[139.] 429 U.S. at 317 (Powell, J., dissenting).
\item[140.] \textit{Id}.
\item[141.] \textit{Id.} at 310.
\item[142.] \textit{Id.} at 315 (Powell, J., dissenting).
\item[143.] \textit{Id.} at 317 (Powell, J., dissenting).
\item[144.] \textit{Id.} at 313.
\item[146.] Rule 3(c)(3) of Local 1291's bylaws was at issue:
In accordance with tradition heretofore observed, the President shall be of the colored race, Vice President, white, Recording Secretary, white, Financial Secretary, colored. Asst. Financial Secretary, white, 4 Business Agents equally proportioned, 3 Trustees (Auditors), 1 white & 2 colored, 2 Sergeants at Arms, 1 colored and 1 white.
\textit{Id.} at 1205.
\item[147.] \textit{Id.} at 1206.
\item[148.] \textit{Id.} (quoting Hotel Employees, 391 U.S. 492, 499 (1968)).
\end{enumerate}
holding office had not resulted in a union election conducted in a “free and democratic” manner.149

The Longshoremen’s court held there was no compelling reason to uphold this bylaw because there was “no objective relationship between the eligibility qualifications and the duties of the office involved.”150 In utilizing this balancing test, the court held that the anti-democratic effect outweighed the asserted objective of the bylaw.151 The court was also troubled because the rule was a “permanent disbarment from union elective positions.”152 In addition, the phrasing of the bylaw may have resulted in the exclusion from office those persons not deemed to be either “colored” or “white”.153

The Local sought to justify the bylaw by claiming that the rule was required to maintain an integrated union and as such fostered the cause of civil rights.154 The court rejected this argument as being unduly speculative, for “should the racial composition of persons looking for jobs as longshoremen change, it seems likely that union membership would have to reflect that change.”155 Lastly, the court noted in invalidating the bylaw that it would not consider a restriction to be a “reasonable qualification” under the LMRDA, when the same would be considered an unlawful employment practice under the Civil Rights Act of 1964.156

The Longshoremen’s court broadened the interpretation of “reasonableness”. However, the boundary line between “reasonable” and “unreasonable” was not predicated substantially on the “effects” test as

149. 338 F. Supp. at 1208.
150. Id. at 1206-07. Under this rule, “whether one has merit or ability or experience to hold office is immaterial if the appropriate racial characteristic is not also present.” Id. at 1207.
151. See supra note 92 and accompanying text.
152. 338 F. Supp. at 1207.
153. Id. at 1208.
154. Id. at 1207. See also Donovan v. Illinois Educ. Ass’n, 667 F.2d 638 (7th Cir. 1982) (The court of appeals held that the union bylaws which guaranteed 8% of the seats in the union’s Representative Assembly for members of four minority groups and which reserved four places on the union’s Board of Directors for members of such minority groups, violated §401(e) of the LMRDA. There was no evidence as to how the Association benefited from the restrictions, nor was the choice of the particular quotas adopted explained. In addition, it was not known whether the minority groups in question were really underrepresented in the councils of the Association. Therefore, the court held that the threat to democratic values that this bylaw posed was great, for the reserved seats were in addition to any that the members of the minority groups might have won in a free election.).
155. 338 F. Supp. at 1207 (footnote omitted).
156. Id. at 1208. The court rejected the rule on still other grounds by finding that “Rule 3(c)(3) amounts to an unlawful employment practice within the meaning of 42 U.S.C. §2000e-2(c):

It shall be an unlawful employment practice for a labor organization—
(1) to exclude or to expel from its membership, or otherwise to discriminate against,
any individual because of his race, color, religion, sex, or national origin.”
Id. at 1207. Further, the Supreme Court has held that “[i]f an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.” Id. at 1208 (quoting Griggs v. Duke Power Co., 401 U.S. 424 (1971)).

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were the Supreme Court decisions. Had the court based its decision solely on the “effects” test, the court may not have decided to deem the bylaw unreasonable.

A more recent analysis of the “reasonable qualifications” clause occurred in Donovan v. Local Union No. 120, Laborers’ International Union. That case involved a union’s constitutional requirement that a candidate for union office be literate and otherwise competent to perform the duties of the office. The Court of Appeals for the Seventh Circuit, relying on the main purpose of the Act as preventing undemocratic practices in union governance, held that the competency requirement was not a “reasonable qualification” capable of being uniformly imposed within the meaning of §401(e) of the LMRDA.

The court held that the competency qualification violated the congressional mandate of “free and democratic” elections in three respects. First, the requirement was ambiguous and did not provide the potential candidate with notice of the specific standards he had to meet to ensure that he would be eligible for the ballot. The qualification was thus anti-democratic for it discouraged potential candidates due to its vagueness.

Secondly, a judgment that a candidate is or is not “competent to perform the duties of the office” is extremely subjective. Three Judges of Election, appointed by the incumbent Board to screen candidates, failed to adopt any specific factors to be considered in determining the “competency” of a candidate. The significant role of personal judgment in assessing “competency” made the decision to disqualify a potential candidate largely discretionary. Therefore, the Laborers’ court held that

157. 683 F.2d 1095 (7th Cir. 1982).
158. Id. at 1098.
159. Id. at 1102. See also supra notes 11-82 and accompanying text.
160. 683 F.2d at 1105.
161. Id. at 1103. The court elaborated:
An essential element of reasonableness is adequate advance notice to the membership of the precise terms of the requirement . . . . Qualifications must be specific and objective. They must contain specific standards of eligibility by which any member can determine in advance whether or not he is qualified to be a candidate.

Id. (quoting 29 C.F.R. §452.53 (1981)).
162. 683 F.2d at 1104.
163. Id.
164. Id. The court also held:
A literacy requirement similar to that imposed by the Local’s Constitution might be capable of uniform application if certain objective tests are administered to measure ability to read and write. A candidate’s competency, on the other hand, can not be readily determined by an objective test; a candidate’s fitness for the office of union president, for example, cannot be readily determined by tests for leadership, loyalty and administrative ability.

Id.
165. Id.
it was highly unlikely that there could be uniform application of the competency provision.166 "When so much discretion is placed in the hands of those chosen by the incumbents, the possibilities for abuse are clear, and free and democratic elections are threatened."167

Finally, the screening by a tribunal of potential candidates for office did not correspond to the process of political elections—Congress' model of democratic elections—where the assumption is that voters will exercise common sense in casting their ballots.168 "In union elections as in political elections, the good judgment of the members in casting their votes should be the primary determinant of whether a candidate is qualified to hold office."169 The method used for selection of candidates here took the selection of officers out of the hands of the union members and was, therefore, an unreasonable qualification.

While the Laborers' opinion provides some new insight into the interpretation problems inherent in the "reasonable qualifications" clause, it fails to clarify entirely the confusion and difficulty in applying §401(e).

PROPOSAL FOR RESOLUTION OF THE CONTROVERSY

There is no doubt that §401(e) of the LMRDA was intended to limit types of bylaws which unduly restrict union members from seeking candidacies for offices. But in seeking to implement this goal, the courts "must keep in mind the fact that the Act did not purport to take away from labor unions the governance of their own internal affairs. . . ."170 A union's freedom to conduct its own elections is reserved for those elections that conform to the democratic principles outlined in §401.171

In accordance with §401(e) "reasonable qualifications" may be placed on the right of members to be candidates.172 However, these restrictions must be closely scrutinized to determine whether they serve such important union purposes to justify subordinating the right of the individual member to seek office.173 When an election is suspected of violating these standards due to an unreasonable qualification, governmental intervention is postponed until the union has the opportunity to redress the impropriety.174 Therefore, before invoking the aid of the Secretary of

166. Id.
167. Id.
168. Id. at 1105.
169. Id. (quoting 29 C.F.R. §452.35 (1981)).
Labor, a complaining union member must first exhaust his internal union remedies.\textsuperscript{175}

The fallacy inherent in these procedures is obvious. Logic dictates that it is highly unlikely that a union will invalidate its own constitutional provisions as unreasonable qualifications when the union itself believes that these bylaws were enacted to serve legitimate and meritorious union purposes. This is not to say that there has been no evidence of unions passing undemocratic bylaws which undermine the purpose of §401(e) of free and democratic union elections. The legislative history of the Act revealed that there was corruption and a substantial lack of democratic processes in the election of union officers.\textsuperscript{176} Rather, the problem lies in the elasticity of the term “reasonable.” Unions do not have clear guidelines upon which they can interpret the meaning and scope of “reasonable qualifications.” This ambiguity induces a case-by-case analysis, leaving the courts no choice but to interfere in the internal affairs of unions.\textsuperscript{177}

The courts, however, have failed to establish a consistent approach to the interpretation of the “reasonable qualifications” standard.\textsuperscript{178} Therefore, whether a violation of §401(e) exists ultimately depends on the trier of fact; the net effect is inconsistency among various levels of the judicial system.\textsuperscript{179} Thus, bylaws which are undemocratic could foreseeably pass this “reasonableness” test. At the same time, the provisions in question and the fate of the election could remain unresolved for several years, waiting for the decision of the final trier of fact.

Judicial discretion in interpreting “reasonable qualifications” has allowed the courts to focus on the possible undemocratic effects which certain qualifications may pose, instead of what effects are in fact undemocratic. Courts are given the freedom to interpret the clause according to their own desired result, when such a result may not be warranted upon the facts.\textsuperscript{180} Thus, the “reasonable qualifications” clause as it currently exists has the potential to invalidate almost any candidacy restriction imposed on union members. This risk outweighs the usefulness of the clause.

*The Code of Federal Regulations*

Although a specific definition of “reasonable qualifications” has not been espoused by either the courts or Congress, certain provisions of the

\textsuperscript{175} Id.
\textsuperscript{176} See supra notes 11–82 and accompanying text.
\textsuperscript{177} 29 C.F.R. §452.36(a) (1983): “The question of whether a qualification is reasonable is a matter which is not susceptible of precise definition, and will ordinarily turn on the facts in each case.” Id.
\textsuperscript{178} See supra notes 83–169 and accompanying text.
\textsuperscript{179} Id.
\textsuperscript{180} See supra notes 111–44 and accompanying text.
Code of Federal Regulations (C.F.R.)\textsuperscript{181} furnish general guidelines in assessing the reasonableness of a qualification.\textsuperscript{182} However, the problem with the C.F.R. is it provides too little guidance in interpreting "reasonable qualifications," thereby leaving the meaning and scope of the clause unsatisfactorily vague. In attempting to clarify this ambiguity, the C.F.R. often uses the term "reasonable" to interpret the "reasonableness" of a restriction, only adding to the confusion.\textsuperscript{183} Further, the C.F.R. relies heavily on court decisions,\textsuperscript{184} which, as noted earlier, are often inconsistent and irreconcilable.\textsuperscript{185}

\textit{Proposed Amendments}

Amendments to §452.36(b) of the current C.F.R. provisions\textsuperscript{186} will dismiss some of the shortcomings which presently exist. Select portions of the C.F.R. are modified in the following proposal, affording unions the opportunity to foresee what qualifications are "reasonable." The remaining sections of the C.F.R. are to be left intact.

§452.36 REASONABLENESS OF QUALIFICATIONS\textsuperscript{187}

(b) Some criteria to be met for a qualification for union office to be "reasonable" are:

(1) The qualification must relate to the legitimate needs and interests of the union and a qualification may not be imposed without a showing that the majority of the union members are in favor of the provision;

(2) The qualification must relate to the demands of union office and the duties of each office are to be outlined in the union's constitution, where all members will have the opportunity to examine them prior to a union election;

(3) The qualification can not disqualify more than 50\% of the membership, in light of the congressional purpose of fostering the broadest possible participation in union affairs;

(4) The qualification must be compared to the requirements for holding office generally prescribed by other labor organizations which are similarly situated; and

\textsuperscript{181} 29 C.F.R. §§452.32--54 (1983).
\textsuperscript{182} 29 C.F.R. §452.36 (1983).
\textsuperscript{183} See, e.g., 29 C.F.R. §452.41 (1983).
\textsuperscript{184} See, e.g., 29 C.F.R. §452.36 (1983).
\textsuperscript{185} See supra notes 83--169 and accompanying text.
\textsuperscript{186} 29 C.F.R. §452.36(b) (1983).
\textsuperscript{187} Id.
The degree of difficulty in meeting a qualification by union members cannot result in more than 50% of the union membership being ineligible.

The provisions of this proposal are intended to give the interpretation of "reasonable qualifications" less flexibility. This scheme is consistent with the long-standing policy against unnecessary governmental intrusion into internal union affairs because it allows the unions to police their own internal controversies.

This proposal eliminates the words "factors to be considered" in describing the necessary elements for a qualification to be deemed reasonable. Because many courts are holding these elements out as prerequisites to reasonableness, they are not to be merely considered; they are the focal point of analysis and must be heeded.

The first and second criteria recognize that a balance must be met between the interests of labor organizations in prescribing minimum standards for potential candidates and the purpose of the Act in protecting the rights of rank-and-file members by having them "participate fully in the operation of their union through processes of democratic self-government, and . . . to keep the union leadership responsive to the membership." The basic assumption underlying "free and democratic" union elections, as in political elections, is that the members of labor organizations will exercise common sense and good judgment in casting their ballots. Because this is the primary determinant of whether a candidate is qualified to hold a union office, the same premise should thus be extended to members voting on the validity of a candidacy qualification. Without this extension, there exists a presumption that the rank-and-file members are unable to distinguish "reasonable" qualifications from "unreasonable" qualifications without the aid of the Secretary of Labor and the courts. Further, by voting for or against the proposed qualification, each member is put on notice of the specific standards of eligibility and he can determine in advance whether or not he is qualified to be a candidate.

The most important aspect of this proposal is the "effects" test. Courts have relied heavily upon the impact of a qualification in invalidating bylaws for policy reasons. It may be argued that this proposal
unduly restricts the union from imposing candidacy restrictions upon its members. However, case law reveals the reluctance of the courts to uphold a restriction which bars more than 50% of the union membership. If the union is going to be held to such a standard, it should be codified to avoid any uncertainty. The built-in percentage limitations will allow the union to determine whether a qualification is unreasonable without unnecessary court intervention.

The proposed legislation attempts to facilitate the interpretation of the "reasonable qualifications" clause contained in §401(e) of the Act. Once the union has failed to meet any of these provisions, the Secretary of Labor and the courts may step in. In order to safeguard their freedom to manage their internal affairs, however, legal protection for valid union elections must begin with the unions themselves.

CONCLUSION

The LMRDA came in the wake of congressional findings of crime and corruption in the labor field. The extensive history of §401(e) illustrates the intent of the legislature to eliminate these illegal practices by ensuring "free and democratic" union elections without unnecessary intervention by Congress or the courts.

The extensive and vigorous debate over Title IV manifested a conflict over the extent to which governmental intervention in this most crucial aspect of internal union affairs was necessary or desirable. In the end there emerged a 'general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts.'

But this can only be accomplished if the rules governing the interpretation of "reasonable qualifications" are administered in a way to provide the necessary degree of certainty. Judicial interference, to the extent it has occurred, unjustifiably cuts the range of candidacy qualifications that unions may place on its members and undermines union self-governance. The interpretation of "reasonable qualifications" must be less flexible in order to provide unions with a better scale upon which to weigh the scope of their restrictions, which in turn will avoid

196. Id.
198. See supra notes 11–82 and accompanying text.
199. Id.
unwarranted court intrusion and give more substantive protection to valid union elections. It appears that the need for more specific guidelines is essential to uphold union democracy: perhaps as essential as the need for the passage of the interpretive rules in the first instance.

_Pamela J. Fitton_