The Right to Democratic Participation in Labor Unions and the Use of the Hobbs Act to Combat Organized Crime

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I. Introduction

The Labor-Management Reporting and Disclosure Act of 1959 (LMRDA)1 guarantees specific membership rights to more than twenty million2 labor union members in the United States. While each union's individual constitution affords its members specific rights,3 the LMRDA, through its Bill of Rights,4 provides for equal protection5 and freedom of speech and assembly,6 and ensures democratic participation by all union members. Moreover, the LMRDA imposes minimum standards on union officials regarding disclosure of

3. 29 U.S.C. § 431(a) requires that “every labor organization shall adopt a constitution and bylaws,” and the section enumerates specific items the constitution must include. While the LMRDA’s Bill of Rights contains a proviso subjecting it to “reasonable rules and regulations in such institution’s constitutions and bylaws,” the proviso does not have the effect of validating a requirement which is inconsistent with the LMRDA’s Bill of Rights. 29 U.S.C. § 411(a)(2) (1982). See Wittstein v. American Fed’n of Musicians, 326 F.2d 26, 30 (2d Cir. 1963), rev’d, 379 U.S. 171 (1964); see generally Summers, Pre-emption and the Labor Reform Act—Dual Rights and Remedies, 22 Ohio St. L.J. 119, 143-44 (1961) (“Under the [LMRDA], certain federal rights are dependent on provisions in the union’s constitution.... The union constitution, however, is... a vague, incomplete and ambiguous document requiring judicial interpretation”).
4. 29 U.S.C. § 411; see infra notes 5-6 and 42-65 and accompanying text.
5. 29 U.S.C. § 411(a)(1) provides a guarantee of equal rights:
   Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization’s constitution and bylaws.
6. 29 U.S.C. § 411(a)(2) ensures union members’ rights to freedom of speech and assembly:
   Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization’s established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.
information, the imposition of trusteeships, the fiduciary duty owed to union members, and procedures for fair elections.\(^7\)

Despite the threat of penalties, and the availability of civil proceedings by union members against union officials who fail to comply with the LMRDA's provisions,\(^8\) labor racketeering and corruption\(^9\) have continued primarily because of the influence of organized crime over some labor unions.\(^10\) In 1986, the President's Commission on Organ-

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8. Each section of the LMRDA contains provisions for redressing violations of the LMRDA. See, e.g., 29 U.S.C. § 412 (providing that any person may bring an action for violations of the Bill of Rights). See also § 439 (violations of the reporting requirements); § 461(c) (violations of trusteeship provisions). For any one of these violations, there may be a fine of not more $10,000 or imprisonment for not more than one year, or both. See also § 501(c) (violations of fiduciary obligations); § 504(b) (prohibitions against certain persons holding office). For a violation of these provisions, there may be a fine of $10,000 or imprisonment for not more than five years, or both. See also § 530 (deprivation of rights by violence—$1,000 fine or one year imprisonment or both). See also infra notes 171-73 and accompanying text.


10. See generally, PRESIDENT'S COMMISSION REPORT I, supra note 9, at 89. The Commission found that “through the legitimacy conferred by infiltration of the business community and the labor movement, organized crime has multiplied its power a hundred fold by gaining access to the institutions of society in an overt way.” Id. at xv. See also United States v. Local 560, Int'l Bhd. of Teamsters, 581 F. Supp. 279 (D.N.J. 1984), aff'd, 780 F.2d 267 (3d Cir. 1985), cert. denied, 476 U.S. 1140 (1986). To emphasize the increasing problem of corruption in the unions, Judge Ackerman quoted David Dubinsky, former President of the International Ladies Garment Workers' Union: “[r]acketeering is the cancer that almost destroyed the American trade-union movement.” 581 F. Supp. at 283 (citing D. DUBINSKY & A. ROSKIN, A LIFE WITH LABOR (1977)). Moreover, discussing the specific role of the Provenzano Group in infiltrating Teamsters Local 560, Judge Ackerman found that “[m]urder and other forms of intimidation [were] utilized to insure silence. To get along, one had to go along, or else.” 581 F. Supp. at 282.

11. The Federal Bureau of Investigation has found that the so-called “Big Four” unions are “substantially influenced and/or controlled by organized crime”: the International Longshoremen's Association; the Hotel Employees and Restaurant Employees
ized Crime disclosed that, out of 70,000 labor organizations, over 400 are associated with, or were influenced or controlled by organized crime. In addition to having a pervasive economic impact on the free market system, union leaders influenced by organized crime have systematically deprived union members of their LMRDA rights by creating a “climate of intimidation” in which members have forsaken the exercise of their rights. These union officials, in turn, personally benefit from their relationship with organized criminal enterprises.

International Union; the International Brotherhood of Teamsters; and the Laborers International Union of North America. President's Commission Report I, supra note 9, at xvi. The President's Commission explained that “although labor racketeering can be conducted by anyone, the history of the labor movement shows that the most substantial corruption in the unions is conducted by organized crime families and syndicates.” Id. at 9.

12. See President's Commission Report I, supra note 9, at 2 n.2. While the Commission pointed out that this number is in fact quite small compared to the 70,000 labor organizations in existence in the United States, the report explained that many of the unions infiltrated by organized crime are “major locals embracing thousands of members, and they operate in strategic commercial sectors and large urban and metropolitan centers.” Id.

13. The President's Commission on Organized Crime uncovered several ways in which businesses can be influenced by organized crime. Some businesses, the Commission reported, are owned or controlled by organized crime. These businesses "provide a legitimate front for criminal activities and can enable organized crime to eliminate competition and set prices in particular markets." President's Commission Report I, supra note 9, at 10-11. Other businesses are enticed into dealing with unions and businesses influenced by organized crime with the reward of reduced labor costs, labor peace, or higher profits. Id. And through more traditional methods of corruption, “some businesses have truly been victims of organized crime, making payoffs or providing other services in response to extortionate demands or risking exclusion from certain markets.” Id.


15. See, e.g., id. at 284. The Government alleged that corruption caused members of Local 560 to "consent to the surrender of certain valuable property in the form of their union rights ...." Id.

16. In addition to the finding of extensive corruption in the Teamsters union in Local 560, the McClellan Committee in the 1950s (see infra note 32) uncovered corruption and racketeering in the Butchers, Bakers, Distillery Workers, Operating Engineers, Carpenters, Textile Workers, and Hotel and Restaurant Employees Unions. Hutchinson, The Anatomy of Corruption in Trade Unions, 8 Indus. Rel. 135, 136 (1969). Moreover, in 1978 "Attorney General Benjamin Civiletti estimated that 300 union locals ‘are severely influenced by racketeers.’ " Blakey & Goldstock, supra note 9, at 342.

17. See generally President's Commission Report I, supra note 9, at 9. The studies of the Big Four unions illustrate how union officials under the influence of organized crime "routinely pay themselves and their allies excessive salaries, fees, and commissions. They and their families can receive an array of benefits and payments, ranging from reimbursement for non-union related criminal defense fees to houses, cars, and chauffeurs." Id. at 12.

Investigations into organized crime have disclosed that the most influential crime
In recent years the Government has used the federal extortion statute (the Hobbs Act) in its attempt to rid unions of the corrupting influence of organized crime, and has alleged that La Cosa Nostra and other organized crime groups have, through the use of extortion, forced union members to forsake their rights guaranteed under the LMRDA. The Government’s first such case succeeded in United States v. Local 560, International Brotherhood of Teamsters. One issue addressed by the court in that case is whether intangible property in the form of membership rights in labor unions are property rights within the meaning of the Hobbs Act. A similar question has developed in cases prosecuted under the mail and wire fraud statutes.

18. 18 U.S.C. § 1951 (1982) [hereinafter the Hobbs Act]. Extortion under the Hobbs Act is defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(b)(2). Thus, a person can be found guilty of extortion under the Hobbs Act either as a result of the wrongful use of force, violence or fear, or, in the alternative, if he acted "under color of official right." Id. "Extortion 'under color of official right' is committed when a public official makes wrongful use of his office to obtain money not due him or his office." United States v. Margiotta, 688 F.2d 108, 130 (2d Cir. 1982), cert. denied, 461 U.S. 913 (1983). Under this theory of extortion, "the wrongful use of official power need not be accompanied by actual or threatened force, violence or fear." Id. at 131. However, under both theories of extortion under the Hobbs Act, a wrongful taking of property is required. This Note will address primarily those Hobbs Act cases in which property—union members' rights to democratic participation in unions—was wrongfully taken through the use of force, violence or fear.

19. See supra note 17.
22. See infra notes 114-34 and accompanying text.
23. 18 U.S.C. § 1341 (1982); see infra notes 119-34 and accompanying text.
utes.\textsuperscript{25} In those cases, courts originally held that the requirement of fraud or injury relating to property under the mail and wire fraud statutes only applied to tangible, economic property interests.\textsuperscript{26} Recently, however, the legislature has extended the coverage of the mail and wire fraud statutes to fraud involving certain intangible rights.\textsuperscript{27}

A second challenge to the use of the Hobbs Act as a prosecutorial tool against the extortion of union members, rights has arisen where Hobbs Act allegations form the basis of suits brought by the Government under the civil remedies\textsuperscript{28} provision of the Racketeer Influenced and Corrupt Organizations Act (RICO).\textsuperscript{29} RICO has become a pow-

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\item The mail fraud statute was amended in response to the Supreme Court's decision in \textit{McNally}, and thus courts now consistently hold that the mail fraud statute protects certain intangible rights. See \textit{infra} notes 125-28 and accompanying text.
\item See supra note 26.
\item See \textit{infra} note 162 and accompanying text. While RICO authorizes the Government to bring both criminal prosecutions and civil proceedings, the Government has increasingly brought suit under the civil remedies provision of RICO because the section gives the court great "discretionary power to make use of a wide range of civil remedies." United States v. Local 30, United Slate, Tile, & Composition Roofers, Damp & Waterproof Workers Ass'n., 686 F. Supp. 1139 (E.D. Pa. 1988), aff'd, 871 F.2d 401 (3d Cir. 1989).
\item In addition, the Government recently entered into an agreement with the General Executive Board of the International Brotherhood of Teamsters in settlement of the Government's complaint alleging that the Commission of La Cosa Nostra had seized control of the Teamsters and used the union as an enterprise for corruption. United States v. International Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y., filed June 26, 1988). In its complaint, the Government alleged similar charges to those discussed in \textit{Local 560}, including the extortion of union members' rights under the Hobbs Act, and expenditure by the General Executive Board of union assets for illegal means. The three main charges in the Government's complaint which constituted a pattern of racketeering activity were: (1) wire fraud in connection with the election of Roy L. Williams and Jackie Presser in violation of 18 U.S.C. § 1343 (1982); (2) extortion of the union membership in violation of 18 U.S.C. § 1951 (1982); and (3) mail fraud in connection with the Teamsters' official journal in violation of 18 U.S.C. § 1341 (1982). Complaint at ¶ 56-80, United States v. International Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y., filed June 26, 1988). The
erful tool used in combatting corruption in labor unions. Congress enacted RICO in 1970 as a weapon to "halt organized crime's incursion into legitimate organizations." A successful civil RICO claim requires proof that a person affects interstate commerce through a pattern of racketeering activity. The statute further defines "a pattern" as the commission of at least two acts of racketeering, and specifically enumerates the predicate acts which constitute racketeering activity, including "any act which is indictable under [the Hobbs Act] (actions relating to interference with commerce, robbery, or extortion)." Moreover, several labor-related crimes are specifically included in RICO's list of predicate acts.

Complaint specifically alleged that members of the Teamster's General Executive Board extorted members' rights through numerous murders, shootings and beatings; the appointment of criminals to union office; associations with criminals; and the failure to redress demonstrated instances of corruption. Under the settlement, the Teamsters officials named as the defendants in the Government's complaint are "permanently enjoined from committing any acts of racketeering activity ... and from knowingly associating with any member or associate of ... organized crime [families of La Cosa Nostra or any other criminal group, or any other person otherwise enjoined from participating in union affairs." No. 88 Civ. 4486 (S.D.N.Y. March 14, 1989) (order). The agreement also gives the court-appointed administrator the authority to distribute information to Teamsters members.

32. Blakey & Goldstock, supra note 9, at 348. See also United States v. Turkette, 452 U.S. 576, 591 (1981). ("major purpose of Title IX is to address the infiltration of legitimate business by organized crime").
33. 18 U.S.C. § 1961(5) (1982): " [P]attern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within [10] years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity."
34. Id. See infra note 156.
36. As used in this chapter—(1) 'racketeering activity' means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under [s]tate law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code . . . ."
37. This list includes, but is not limited to, extortion, bribery, mail fraud, and wire fraud.
This Note examines the use of the Hobbs Act to preserve democracy in labor unions. Part II discusses the LMRDA and the importance of membership rights to the fair and democratic management of labor unions. Part III examines the requirements for prosecution under the Hobbs Act and illustrates that the rights incident to full democratic participation in the affairs of unions are property rights that qualify as the kind of property which can be wrongfully taken under the Hobbs Act. Part IV discusses the RICO cause of action where a Hobbs Act violation serves as a predicate act, and RICO’s legislative history with regard to its use as a weapon to combat corruption in labor unions, and concludes that the RICO cause of action predicated in part on labor-related crimes is appropriate where the democratic rights of union members have been extorted. Finally, this Note concludes that the Hobbs Act should be interpreted, as the mail fraud statute has, to protect intangible rights, sending a clear signal that union officials and corrupt organizations will be prosecuted under the Hobbs Act when union members’ rights are extorted.

II. Democratic Rights Under The LMRDA

The LMRDA was passed in 1959 in response to congressional investigations, led by Senator John McClellan, into the growing problem of racketeering and corruption within the nation’s labor unions.38

predicate acts. See Brief for Plaintiff at 26, United States v. International Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y., filed June 26, 1988).

38. SELECT COMM. ON IMPROPER ACTIVITIES IN THE LABOR AND MANAGEMENT FIELD, S. REP. NO. 187, 86th Cong., 1st Sess. 2, reprinted in 1959 U.S. CODE CONG. & ADMIN. NEWS 2318 (the Chairman of the Committee was Senator John McClellan of Arkansas) [hereinafter the McClellan Committee]. See R. BELLACE AND A. BERKOWITZ, THE LANDRUM-GRIFFIN ACT: TWENTY YEARS OF FEDERAL PROTECTION FOR UNION MEMBERS’ RIGHTS (Labor Relations and Public Policy Series, University of Pennsylvania, Industrial Research Unit, vol. 19 (1979)) [hereinafter BELLACE & BERKOWITZ]; see also Aaron, The Labor Management Reporting and Disclosure Act of 1959, 73 HARV. L. REV. 851 (extensive discussion of LMRDA legislative history) [hereinafter Aaron]. The McClellan Committee published two interim reports, one in 1958 and one in 1959, and a final report in 1960 after the LMRDA was passed. Although the investigations of the Committee were aimed at corruption throughout the nation's unions, the Teamsters union emerged as the union most riddled with corruption. BELLACE & BERKOWITZ, supra, at 3. 29 U.S.C. § 401 (1982) contains a statement of findings, purposes and policy of the LMRDA:

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been 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 ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.
Indeed, the LMRDA incorporated several specific recommendations which emerged from these investigations. The McClellan Committee's first interim report stressed the need for federal regulations to ensure the efficient and honest representation to which each union member is entitled. Through democratic participation and the public disclosure to members of the unions' financial matters, the drafters of the LMRDA sought to ensure that union officials would be accountable to the members, thus protecting individual members from corrupt leadership. The LMRDA addresses various forms of corruption uncovered by the McClellan Committee; an analysis of the abuses that prompted the legislation illustrates the lack of democratic participation which results when union members are unable to exercise their rights now guaranteed by the LMRDA.

A. The Bill of Rights of Union Members

Title I of the LMRDA contains the Bill of Rights of union members, and its purpose is clear: to guarantee equal rights, freedom of speech and assembly, to regulate dues, initiation fees, and assessments, to protect union members' right to sue, and to provide safe-
guards against improper disciplinary action against union members.\textsuperscript{47} Through their investigations, the McClellan Committee found that there existed "a significant lack of democratic procedures in [the] unions studied,"\textsuperscript{48} and recommended that procedures be enacted to regulate elections and safeguard the rights of members.\textsuperscript{49} The resulting Bill of Rights was designed specifically for that purpose.\textsuperscript{50}

The legislative history of Title I indicates that Senator McClellan envisioned a free speech provision in the LMRDA's Bill of Rights which would equal the protection of free speech guaranteed by the first amendment to the United States Constitution.\textsuperscript{51} Senator McClellan emphasized that equal rights\textsuperscript{52} guaranteed to union members should mirror the "basic human rights on which our very freedom was founded."\textsuperscript{53} Rather than word the section as a wide-open guarantee of basic human rights, however, the final version of the section enumerated the specific rights which would be protected.\textsuperscript{54} Furthermore, these rights are "subject to reasonable rules and regulations in such organization's constitution and bylaws."\textsuperscript{55}

In several cases courts have found that infringements on the equal protection and free speech guarantees of the Bill of Rights have forced\textsuperscript{56} members to relinquish their rights guaranteed under the

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\item Aaron, \textit{supra} note 38, at 856-57.
\item \textit{See supra} note 39.
\item 29 U.S.C. § 411(a)(1) (1982); see, \textit{e.g.}, Finnegan v. Leu, 456 U.S. 431, 435-36 (1982) (emphasis of § 411 of the LMRDA is "on the rights of union members to freedom of expression without fear of sanctions by the union, which in many instances could mean loss of union membership and in turn loss of livelihood").
\item U.S. Const. amend I. See 105 Cong. Rec. 5810-11 (1959), \textit{reprinted in II Legislative History of the Labor Management Reporting and Disclosure Act} at 1102 (1959) [hereinafter \textit{II Legislative History}]. Democracy in unions has been compared to democracy in government: "only in a democratic union can workers, through chosen representatives, participate jointly with management in the government of their industrial lives even as all of us may participate, through elected representatives, in political government." Cox, \textit{Internal Affairs of Unions Under the Labor Reform Act of 1959}, 58 Mich. L. Rev. 819, 830 (1960).
\item \textit{See supra} note 5.
\item 105 Cong. Rec. 5811 (1959), \textit{reprinted in II Legislative History, supra note 51, at 1103; see also} Finnegan v. Leu, 456 U.S. at 435 (LMRDA's Bill of Rights was "aimed at enlarged protection for members of unions paralleling certain rights guaranteed by the [federal Constitution . . . ").
\item \textit{See supra} notes 4-6. Moreover, the resulting free speech provision gave unions specific grounds on which they could discipline members' speech. Semancik v. United Mine Workers, 466 F.2d 144, 153 (3d Cir. 1972).
\item 29 U.S.C. § 411(a)(1) (1982); \textit{see also supra} note 3 and accompanying text.
\item \textit{See supra} note 15 and accompanying text.
\end{itemize}
These cases demonstrate that when members give up their Title I rights, the remaining provisions of the LMRDA, such as election safeguards, reporting requirements, and fiduciary obligations, fail to be enforced because members fear the consequences of speaking out against these abuses.

In *Semancik v. United Mine Workers* for example, the court found that the union violated the free speech guarantee of the LMRDA’s Bill of Rights by disciplining union members whenever they discussed the fitness of union leaders. Under the circumstances of the broad disciplinary rules established by the Mine Workers officials, the court found that “a reasonable man might well refrain from taking full advantage of his rights.” Similarly, in *Hall v. Cole*, the Supreme Court stressed that “[w]hen a union member is disciplined for the exercise of any of the rights protected by Title I, the rights of all members of the union are threatened.” Moreover, the *Hall* Court found that “by vindicating his own right, the successful litigant dispels the ‘chill’ cast upon the rights of others.”

### B. Reporting Requirements

Title II of the LMRDA guarantees the disclosure to union members of information regarding the financial condition of the unions.

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57. See, e.g., Sheet Metal Workers’ Int’l Ass’n v. Lynn, 109 S. Ct. 639 (1989). In *Lynn*, an elected business agent was removed in retaliation for his outspoken opposition to a dues increase sought by a union trustee appointed by the international union’s president. The Court explained that the removal of an elected official not only deprives members of the representative of their choice, but also creates a “chilling effect” on members’ free speech rights. As the Court illustrated, “[s]eeing Lynn removed from his post just five days after he led the fight to defeat yet another dues increase proposal, other members of the Local may well have concluded that one challenged the union’s hierarchy, if at all, at one’s peril.” *Id.* at 645 (footnote omitted). See also Steelworkers v. Sadlowski, 457 U.S. 102, 109, reh’g denied, 459 U.S. 899 (1982); *Hall v. Cole*, 412 U.S. 1, 8 (1973); Wirtz v. Hotel Employees, 391 U.S. 492, 497 (1968).

58. See supra notes 41-46; see infra notes 65-88 and accompanying text.

59. See infra notes 66-96 and accompanying text.

60. See, e.g., *Semancik v. United Mine Workers*, 466 F.2d 144 (3d Cir. 1972). In that case, union members who opposed incumbent union officers were granted preliminary injunctions from disciplinary action by the union. See also Sheet Metal Workers’ Int’l Ass’n v. Lynn, 109 S. Ct. 639, 645 (1989).

61. *Semancik*, 466 F.2d at 154.

62. *Id.*

63. 412 U.S. 1, 8 (1973).

64. *Id.*

65. *Id.*

66. 29 U.S.C. §§ 431-441 (1982). See Bellace & Berkowitz, supra note 38, at 84 (“Congress enacted the reporting requirements of Title II with the hope that disclosure would act as a deterrent to improper activities”).
and its officials.\textsuperscript{67} This section also requires that unions file with the Secretary of Labor their constitutions and bylaws containing provisions and procedures regarding membership requirements, disbursement of union funds, the calling of meetings, and discipline or removal of officers.\textsuperscript{68}

When these reporting requirements are violated, the members' lack of knowledge may result in an inability to exercise their rights of voting and free speech. The cases construing these requirements indicate that without full disclosure, members are unaware of internal union affairs, and as a result, are unable to make informed decisions about important union issues.\textsuperscript{69}

In the \textit{Local 560} case, for example, the court found that the Teamsters executive board defendants violated the members' rights to disclosure, and as a result the officials extorted union members' rights by:

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\item[(1)] making certain appointments and reappointments to union offices;
\item[(2)] failing to remove certain appointees from office;
\item[(3)] spending union assets for [the personal use of] Anthony Provenzano;
\item[(4)] permitting access to local 560's offices by known or reputed
\end{itemize}

\textsuperscript{67} 29 U.S.C. § 431(b) (1982); The McClellan Committee emphasized that the LMRDA was:

designed to prevent, discourage, and make unprofitable improper conduct on the part of union officials, employers, and their representatives by requiring reporting of arrangements, actions, and interests which are questionable. . . . Only full disclosure will enable the persons whose rights are affected . . . to determine whether the arrangements or activities are justifiable, ethical, and legal.


\textsuperscript{68} 29 U.S.C. § 431(a)(5) (1982). Moreover, Title II requires that unions make this information available to all members.

\textsuperscript{69} See, e.g., United States v. Local 560, Int'l Bhd. of Teamsters, 581 F. Supp. 279, 316 (D.N.J. 1984), aff'd, 780 F.2d 267, 283 (3d Cir. 1985), cert. denied, 476 U.S. 1140 (1986); see infra notes 69-70 and accompanying text.

Edwin H. Stier, court-appointed trustee of Local 560, commented recently: "[i]n the Provenzano days . . . this union hall was always full of hard-core Mafia thugs—extortionists, thieves, murderers. No one dared to raise his voice in the face of scandal and victimization, so great was the sense of powerlessness." N.Y. Times, Nov. 20, 1988, § 4 (Week In Review), at 6, col. 3. Through the successful RICO action against Local 560, and the appointment of a trustee to ensure fair elections and full disclosure, Mr. Stier predicted "a beginning toward creating a truly democratic atmosphere in which members know that they have rights which do not derive directly from those in power, in which they exercise free speech and where. . . they will hold the people elected accountable if they do not provide good leadership." \textit{Id}. Recently, however, the Local 560 election was held and Michael Sciarra, an associate of Anthony Provenzano was elected. In reaction to the election, Local 560's trustee observed that "the local, if not willing to change its leadership, was at least changing its ways." N.Y. Times, Dec. 8, 1988, at B12, col. 1.
criminals; and (5) being recklessly indifferent to the above-mentioned systematic misconduct of fellow incumbent officers.70

The district court emphasized in Local 560 that "the true test of union democracy is whether the members feel free to openly criticize the policies and practices of the incumbents, and not merely whether there [is] any opposition to candidates."71

C. Trusteeships

In their original form, trusteeships72 were imposed by parent unions to remedy corruption by union officials at the local level. However, the McClellan Committee's investigations revealed that trusteeships were no longer being used as a remedy for corruption, but rather as an instrument for further corruption.73 The McClellan Committee discovered that national or international (parent) unions74 had imposed trusteeships on local (subordinate) unions75 without legitimate reasons, and in several instances had kept the subordinate groups under trusteeship for unnecessarily long periods. For example, when the LMRDA was passed, seventeen United Mineworkers' districts had been in trusteeship for more than twenty years, and four districts had been in trusteeship for more than ten years.76


72. 29 U.S.C. § 402(h) defines a trusteeship as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

73. The House Committee on the LMRDA reported that "the hearings of the McClellan Committee demonstrate that in some instances trusteeships have been used as a means of consolidating the power of corrupt union officers, plundering and dissipating the resources of local unions, and preventing the growth of competing political elements within the organization." H. R. REP. No. 741, 86th Cong., 1st Sess. 13 (1959), reprinted in 1959 U.S. CODE CONG. & ADMIN. NEWS 2424, 2435.

74. See infra note 75.

75. A subordinate body is a labor organization that is subject to the jurisdiction of a higher (parent) labor organization. M. MALIN, INDIVIDUAL RIGHTS WITHIN THE UNION 179 (1988).

76. See Note, Landrum-Griffin and the Trusteeship Imbroglio, 71 YALE L.J. 1460, 1488-89 (1962). See generally, D. MCLAUGHLIN & A. SCHOOMAKER,THE LANDRUM-GRiffin ACT AND UNION DEMOCRACY at 127 (1979). Five major abuses of the trusteeship remedy were found by the McClellan Committee:

1. Some parent bodies imposed trusteeships without legitimate basis for doing so.
Title III of the LMRDA was designed to prevent such abuse of the trusteeship remedy. The title both guarantees that trusteeships will be imposed to prevent the arbitrary use of trusteeships on local unions, and sets forth standards for trusteeships once they are imposed.

Where alleged undemocratic processes violate the LMRDA, such as violations of election processes, the imposition of trusteeships is proper and effective. Moreover, the imposition of a trusteeship that meets the requirements of Title III can be a valuable method of re-

2. Some parent organizations kept their subordinate body under trusteeship for too long a time. . . .
3. The imposition and continuation of such trusteeships often went against the wishes of the rank and file members.
4. Trusteeships were at times used by the parent body as a means of looting local treasuries.
5. Some parent body officials used the votes of convention delegates from locals under trusteeship either to capture top officials or to perpetuate themselves in office once elected.

Id. at 127.
78. 29 U.S.C. § 462 provides:
Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeships over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objectives of such labor organization.

See, e.g., Jolly v. Gorman, 428 F.2d 960, 967 (5th Cir. 1970), cert. denied, 400 U.S. 1023 (1971) (section ensures that a union cannot arbitrarily or capriciously impose its will on a subordinate body or establish a trusteeship for insidious purposes).

79. See infra notes 90-96 and accompanying text.
[in a case where financial problems are the chief source of trouble in a union, or where entrenched incompetence in leadership temporarily undermines the rights of the membership, a trusteeship may be the best choice. That is not the case here, where the court is confronted by a union that has existed for many years as a criminal-dominated organization.

storing democracy to a union. While members of local unions have several other options to remedy dissatisfaction with the parent body, in order to use these mechanisms, members' Bill of Rights and election procedures must be enforced so that the members can express their dissatisfaction and seek relief through the enforcement provisions of the LMRDA.

D. Fiduciary Responsibility Requirements

Title V of the LMRDA imposes a fiduciary responsibility on a union's officers and employees to its members. The title specifically provides that the duty of a union officer is "to hold its money solely for the benefit of the organization . . . to refrain from dealing on behalf of an adverse party . . . and from holding or acquiring any pecuniary or personal interest which conflicts with the interest of such organization." The hearings of the McClellan Committee disclosed the pervasive abuse of authority by union officials, finding over the course of fifteen years that more than ten million dollars had been either misused, stolen, or embezzled by officials of only five unions. Moreover, in 1986

81. See supra note 8 and accompanying text.
82. See BELLACE & BERKOWITZ, supra note 38, at 148-49 ("[i]f local members can freely speak out on the international's policies, and elections for the international's offices are conducted fairly, courts should refuse to make changes unattainable through the ballot box").
83. 29 U.S.C. § 501(a) provides:
[t]he officers, agents, shop stewards and other representative members of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person . . . to hold its money and property solely for the benefit of the organization and its members . . . to refrain from dealing with such organization as an adverse party . . . in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization . . .

84. 29 U.S.C. § 501(a) (1982). See United States v. Local 30, United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Assn., 686 F. Supp. 1139, 1166 (E.D. Pa. 1988), aff'd, 871 F.2d 401 (3d Cir. 1989) ("use of [u]nion funds to pay for bail bonds, criminal defense and related costs incurred in criminal cases against [u]nion officials is a breach of the [u]nion officers' fiduciary responsibilities . . . and constitutes illegal disbursements"). See also Morrissey v. Segal, 526 F.2d 121, 127 (2d Cir. 1975). It is a violation of the fiduciary duties provision of the LMRDA to spend union funds for the personal defense of union officers accused of wrongdoing "prior to a full determination on the merits."

85. See BELLACE & BERKOWITZ, supra note 38, at 283. The five unions studied were
the President's Commission on Organized Crime reported numerous instances of financial abuse resulting from organized crime's influence over union officials.86

While a large part of the officers' fiduciary duty involves the union's finances, this duty extends beyond financial matters87 to include the members' rights of democracy and due process.88 Union officials can effectively preserve these rights by adhering to their obligation of providing union members with the information necessary to make informed decisions about union issues.89

E. Election Safeguards

While all the guarantees of the LMRDA contribute in some way to ensuring fairness and democratic participation in elections, specific regulations involving the conduct of elections are enumerated in Title IV.90

One significant way in which the election process is abused is through the financial91 and physical coercion of members. In the face of such coercion, or threat of coercion, union members may either
decide not to participate in elections, or may hide their preferences.92

A striking example of the way that threatened coercion affects union membership emerges from the Local 560 case, in which one alleged form of coercion consisted of the threat to the union membership that anyone who openly criticized the controlling Provenzano Group93 ran the risk of physical injury.94 This allegation arose after the disappearance of Anthony Castellito in 1961, who at the time of his disappearance was openly supported by a group which had challenged the Provenzanos during the Local’s 1960 election. The Government alleged, and the court found, that after Castellito’s disappearance, a perception grew among the membership that “anyone who represented an actual or potential threat to the Provenzano Group’s dominance and control over Local 560 ran the risk of physical injury.”95 The court found, moreover, that “the nature and intensity of that perception has been such that it survives to the present day and is capable of exerting a substantial influence over the thoughts and actions of the current members of Local 560.”96

III. Extortion of Union Members’ Rights

A. The Local 560 Case

In United States v. Local 560, International Brotherhood of Teamsters,97 the Government brought a civil RICO action98 against a local
union alleging, among other charges of racketeering, the extortion of the membership's right to democratic participation in violation of the Hobbs Act. The district court held, and the Third Circuit affirmed, that the rights guaranteed to union members under the Bill of Rights of the LMRDA are property rights within the meaning of the Hobbs Act. The court found that officers of the Teamsters Local contributed to a climate of fear which "coerced a substantial portion of the membership into relinquishing their LMRDA rights . . ." through sophisticated and indirect physical and economic threats. The court also found that Anthony Provenzano and other members of the Provenzano Group had gained control of and exploited Local 560. In addition to the findings of corruption in Local 560, the Government has successfully proven in other cases that the control of unions by organized criminal enterprises has caused union members to relinquish their rights.

B. The Hobbs Act

The Hobbs Act is a broadly worded statute which was enacted in

to put Local 560 into trusteeship because the Local had become controlled by the Provenzano faction of the Genovese Crime Family.

98. See supra note 28.
99. See infra note 156. The complaint alleged that the Provenzano Group conspired, in violation of 18 U.S.C. § 1962(d), to violate, and actually did violate, 18 U.S.C. § 1962 (b) and (c). 780 F.2d at 283. For a discussion of the specific RICO provisions and how they applied to this case, see infra notes 155-73 and accompanying text.
100. Local 560, 780 F.2d at 287. In addition to this suit against a Teamsters local, the Government brought similar charges against the General Executive Board of the International Brotherhood of Teamsters. No. 88 Civ. 345 (S.D.N.Y., filed June 26, 1988). See supra note 29.
103. See supra note 4 and accompanying text.
104. 780 F.2d at 282.
105. Id. at 283.
106. 581 F. Supp. 279, 306. Anthony Provenzano was the leader of the Provenzano organized crime group, who, with members of the executive board of Local 560, "unlawfully acquired and maintained, directly and indirectly, an interest in and control of the Local 560 enterprise through a pattern of racketeering activity." Id. at 283-84.
(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or
1946\textsuperscript{109} with the main purpose of combatting labor racketeering.\textsuperscript{110} The extortion offense can be analyzed in terms of its three requirements:\textsuperscript{111} (1) the obtaining of property from another (2) induced by actual or threatened force, violence or fear, or under color of official right\textsuperscript{112} (3) in such a manner as to affect interstate commerce.\textsuperscript{113}

1. The Property Requirement

The property requirement of the Hobbs Act has received considerable attention by Congress and the courts,\textsuperscript{114} because the language of the Hobbs Act makes no distinction between intangible and tangible property.\textsuperscript{115} The prevailing view of the property requirement is that it includes both tangible property rights and any intangible property in-

\textsuperscript{110} See United States v. Brecht, 540 F.2d 45, 51 (2d Cir. 1976), cert. denied, 429 U.S. 1123 (1977) ("main purpose of Congress in enacting the Hobbs Act was to combat labor racketeering. . ."); United States v. Daly, 564 F.2d 645, 650-51 (2d Cir.), cert. denied, 435 U.S. 933 (1977) ("the corrupt abuse of the power of a union official in our view is precisely the type of activity which the [Hobbs] Act was designed to embrace"); see also Brown & Peer, The Anti-Racketeering Act: Labor and Management Weapon Against Labor Racketeering, 32 N.Y.U. L. REV. 965 (1957) [hereinafter Anti-Racketeering Act].


\textsuperscript{112} See supra note 18 for a discussion of extortion committed through the wrongful use of official power.


terest from which someone derives livelihood or wealth.116 In addition, several state courts have characterized union membership rights as property because denial of membership rights precludes individuals from working.117 New York courts, moreover, have specifically held that voting rights are a form of property in New York.118

116. See Local 560, 780 F.2d at 281; United States v. Tropiano, 418 F.2d 1069, 1075-76 (2d Cir. 1969), cert. denied, 397 U.S. 1021 (1970). The Tropiano court held that the concept of property is not limited to tangible property, but includes "any valuable right considered as a source or element of wealth and does not depend upon a direct benefit being conferred on the person who obtains the property." See also United States v. Santoni, 585 F.2d 667, 673 (4th Cir. 1978) (right of company to make business decisions free from outside pressure wrongfully imposed constitutes property for purposes of the Hobbs Act), cert. denied, 440 U.S. 910 (1979); United States v. Nadalone, 471 F.2d 340 (5th Cir.) (intangible property such as business accounts and unrealized profits therefrom are included within those rights protected by this chapter), cert. denied, 411 U.S. 951 (1973); Bianchi v. United States, 219 F.2d 182, 189 (8th Cir.) (victim's rights under its construction contract when threatened by prolonged illegal strike may be considered property), cert. denied, 349 U.S. 915 (1955); United States v. Zemek, 634 F.2d 1159 (9th Cir.) (right to solicit business free from threatened destruction and physical harm falls within the scope of protected property rights under the Hobbs Act), cert. denied, 450 U.S. 985 (1980); Battaglia v. United States, 383 F.2d 303 (9th Cir. 1967) (right to lease space in bowling alley free from threats), cert. denied, 390 U.S. 907 (1968). See also Bianchi v. United States, 219 F.2d 182 (8th Cir.), cert. denied, 349 U.S. 915 (1955), in which the court quoted the Webster's Dictionary definition of property: "[t]he exclusive right to possess, enjoy, and dispose of, a thing; ownership; in a broad sense, any valuable right or interest considered primarily as a source or element of wealth." Id. at 189 (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d. ed. 1936)).

117. See, e.g., Carroll v. Electrical Workers, IBEW, Local 269, 133 N.J. Eq. 144, 147, 31 A.2d 223, 225 (1973) (stressing that union democracy is essential to prevent members from being "deprived of their constitutional right to earn a livelihood"); Dorrington v. Manning, 135 Pa. Super. 194, 201, 4 A.2d 886, 890 (1939) (right to labor and earn a living is a property right; action taken by union local which deprived plaintiff of his right to work is violative of plaintiff's constitutional rights); see generally, M. MALIN, INDIVIDUAL RIGHTS WITHIN THE UNION at 15 (1988).

118. See Dusing v. Nuzzo, 177 Misc. 35, 29 N.Y.S.2d 882 (Sup. Ct. Ulster County), modified on other grounds, 263 A.D. 59, 31 N.Y.S.2d 849 (3d Dep't 1941). The court held that the right to membership in a union is empty if the corresponding right to an election guaranteed with equal solemnity in the fundamental law of the union is denied. If a member has a 'property right' in his position on the roster . . . he has an equally enforceable property right in the election of men who will represent him in dealing with his economic security and collective bargaining where that right exists by virtue of express contract in the language of a union constitution.

Id. at 37, 29 N.Y.S.2d at 884.

This holding is significant because the definition of extortion in the Hobbs Act was modelled after the New York extortion statute. See 91 CONG. REC. 11900 (1945). Congressman Hobbs stated: "there is nothing clearer than the definitions of robbery and extortion in this bill. They have been construed by the courts not once, but a thousand times. The definitions in this bill are copied from the New York code substantially." See also United States v. Harding, 563 F.2d 299, 304 (6th Cir.), cert. denied, 434 U.S. 1062 (1977). Upholding a Hobbs Act conviction, the court looked at the legislative history of
A similar conclusion protecting intangible rights has developed in cases brought under the mail fraud statute. This conclusion was reached, however, only after courts had struggled with the issue of whether the statute was intended to protect the public's intangible right to honest and faithful government.

In 1987 the Supreme Court held in McNally v. United States that the mail fraud statute does not prohibit schemes to defraud people of their intangible right to honest and faithful government, but only to fraud involving money or property. The Court looked at the legislative history of section 1341 and found it to be limited in scope to the protection of money or property rights. With this decision, the McNally court overruled previous lower court holdings which had extended the mail fraud statute to cover intangible rights as well.

The mail fraud statute was recently amended, however, and the amendment was designed specifically to overrule the McNally decision, thus once again extending the mail fraud statute to protect intangible rights. The drafters of the amendment made it clear that...
the intent of the statute was to return to the law before *McNally* in which the right to honest and faithful government was a protected property right.\(^{127}\) Additionally, in several cases before the mail fraud statute was amended, courts held that the mail fraud statute specifically protects union members' intangible property right in the honest and faithful services of union officials.\(^{128}\)

Thus, as evidenced by the explicit intent of Congress,\(^ {129}\) the doctrine of pre-\*McNally* cases,\(^ {130}\) extending the mail fraud statute's coverage to the intangible property rights in government, has prevailed. Furthermore, at least one circuit court has held\(^ {131}\) that intangible membership rights in labor unions constitute "property" within the meaning of the Hobbs Act.\(^ {132}\) Despite the amendment to the mail fraud statute, courts could still apply the *McNally* analysis to the interpretation of the Hobbs Act, thus limiting that statute to the extortion of tangible property. Indeed, the union defendants in *United States v. International Brotherhood of Teamsters*\(^ {133}\) argued that the Supreme Court's decision in *McNally*, "while interpretive of the mail fraud statute, [necessitates] re-evaluation of analogous Hobbs Act decisions as well."\(^ {134}\) To prevent such a re-evaluation, Congress should clarify the definition of property in the Hobbs Act as it did in the amendment to the mail fraud statute. Thus, union members' rights

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\(^{127}\) Senator Biden stated that under the amendment, "it is a crime to deprive any organization—such as a corporation or a labor union—of the loyal services of its employees." 134 CONG. REC. S12,584 (daily ed. Sept. 15, 1988) (statement of Sen. Biden).

\(^{128}\) See, e.g., United States v. Price, 788 F.2d 234, 237 (4th Cir. 1986) ("union and its members were not receiving what they were entitled to, that is the honest and faithful services of their officials in the exercise of their official duties"); United States v. Boffa, 688 F.2d 919, 931 (3d Cir. 1982), cert. denied, 460 U.S. 1022 (1983); United States v. Stout, 499 F. Supp. 602 (E.D. Pa. 1980).

\(^{129}\) See supra notes 126-27 and accompanying text.


\(^{132}\) Moreover, in the recent decision *Carpenter v. United States*, the Supreme Court commented that the "intangible nature [of property] does not make it any less 'property' protected by the mail and wire fraud statutes." 484 U.S. 19, 25 (1987).

\(^{133}\) No. 88 Civ. 4486 (S.D.N.Y., filed June 26, 1988).

\(^{134}\) Brief for the International Brotherhood of Teamsters at 38, United States v. International Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y., filed June 26, 1988).
to democratic participation in union affairs will constitute property within the meaning of the Hobbs Act.

2. The Threat of Fear Requirement

In addition to satisfying the property requirement, successful prosecution under the Hobbs Act requires that the property be obtained through "wrongful use of actual or threatened force, violence, or fear, or under color of official right." Typical cases which satisfy the fear requirement involve a promise of economic benefit made to a victim of extortion although he has no legal claim to such benefit. Courts have consistently held that the victim need only prove that he reasonably believed the defendant possessed the power to harm him in order to satisfy the fear element of the Hobbs Act.

In considering the force, violence or fear requirement, the Local 560 court found that "intimidation and fear... caused the members of Local 560 to surrender their LMRDA democratic rights." Moreover, the court found that this fear was evidenced by the failure of the membership to enunciate any opposition to the corrupt leadership of the local.

The specific instances detailed in the Government's complaint illustrate the climate of fear created in the Local 560 case. Activities proven by the Government included several murders of Teamsters officials and replacement of these officials with the members of the Provenzano organized crime group despite their prior criminal con-

136. See, e.g., United States v. Russo, 708 F.2d 209, 214 (6th Cir.) (defendant's mafia reputation created a fear of economic loss among members of Teamsters Local 299 and defendants violated the Hobbs Act because they "knew of and intentionally made use of [the members'] actual fear"), cert. denied, 464 U.S. 993 (1983). See also Note, Greenmail, supra note 111, at 664.
137. See, e.g., United States v. Capo, 817 F.2d 947 (2d Cir. 1987); see also United States v. Billups, 692 F.2d 320, 330-31 (4th Cir. 1982) (fear need not be consequence of direct or implicit threat by defendant, but need only be reasonable under the circumstances), cert. denied, 464 U.S. 820 (1983); see also Note, Greenmail, supra note 111, at 664 ("courts commonly define fear as 'a state of anxious concern, alarm or apprehension of anticipated harm'.")
139. The district court in Local 560 found that "if an individual fails to act when he has an affirmative duty to do so, negative inferences concerning his intent can be drawn from this inaction." 780 F.2d at 284.
140. Id. at 274.
141. See Local 560, 581 F. Supp. at 284-85. The district court addressed each allegation separately and deemed the testimony to be credible. Id. at 315.
Convincing evidence was heard at the *Local 560* trial by an expert witness for the Government who testified that "a significant proportion of Local 560's rank and file were induced by fear of the Provenzano Group to surrender their membership rights." Thus, in actions alleging extortion of union membership rights, the element of fear as required under the Hobbs Act is met where, as in *Local 560*, it can be shown that the membership failed to protest the corrupt activities of the union officials because of the reasonable belief that to do so would result in retaliation by the leadership.

3. Effect on Interstate Commerce Requirement

The Hobbs Act also requires that there be an obstruction, delay or other adverse affect on interstate commerce as a result of the alleged robbery or extortion. Several courts have held that only a *de minimus* effect on interstate commerce need be shown to support a conviction under the Hobbs Act. Moreover, some jurisdictions require an effect on interstate commerce, but this is not a requirement for conviction under the Hobbs Act.  

142. *Id.* This is a violation of 29 U.S.C. § 504 (1982) (prohibitions against persons holding office).

No person . . . who has been convicted of robbery, bribery, extortion, embezzlement, grand larceny . . . a violation of [the reporting or trusteeship requirements of] this chapter, any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization . . . shall serve . . . (2) as an officer, director, trustee, member of any executive board or similar governing body . . . or representative in any capacity of any labor organization.

143. 581 F. Supp. at 316. Professor Summers was a labor law specialist who testified at the trial that "[i]t is beyond belief that 10,000 members would sit by and watch these things done and never utter a peep." *Local 560*, 780 F.2d at 278.

144. 780 F.2d at 278.


146. 581 F. Supp. at 334. "The wrongful use of actual or threatened force or violence or of fear of economic or physical harm in order to cause the membership of a labor organization to surrender . . . federally protected rights constitutes extortion within the meaning of [the Hobbs Act]. *See also id.* at 334 and cases cited therein.


148. See United States v. Cerilli, 603 F.2d 415, 424 (3d Cir. 1979) (to satisfy the effect on interstate commerce requirement, "all that is required . . . is proof of a reasonably probable effect on commerce, however minimal, as [a] result of the extortion"), *cert. denied*, 444 U.S. 1043 (1980) (quoting United States v. Spagnolo, 546 F.2d 1117, 1119 (4th Cir. 1976) (per curiam), *cert. denied*, 433 U.S. 909 (1977)). For cases requiring only a *de minimus* effect on interstate commerce, see United States v. Phillips, 577 F.2d 495, 501 (9th Cir.), *cert. denied*, 439 U.S. 831 (1978); United States v. Gambino, 566 F.2d 414, 418 (2d Cir. 1977), *cert. denied*, 435 U.S. 952 (1978); *see also United States v. Braasch*, 505 F.2d 139, 147 (7th Cir. 1974), *cert. denied*, 421 U.S. 910 (1975) (quoting United States v. De Met, 486 F.2d 816 (7th Cir.) ("extortionate conduct having an arguably *de minimus* effect on interstate commerce may nevertheless be punished"), *cert. denied*, 416 U.S. 969 (1983)).
quire only a "probable or potential" effect.\textsuperscript{149}

The court in \textit{Local 560} explained that interstate commerce was affected by the extortion of members' rights because the local union entered into collective bargaining agreements with and contracted with businesses directly engaged in interstate commerce.\textsuperscript{150} Similarly, in \textit{Rodonich v. Housewreckers Union, Local 95}, the court stated that "because the LMRDA was enacted under the auspices of the Commerce Clause, [where the extortion of LMRDA rights is found] the effect on interstate commerce is clear."\textsuperscript{151} This finding by the court in \textit{Rodonich} suggests that every Hobbs Act case which implicates rights guaranteed under the LMRDA will satisfy the requirement that there be an effect on interstate commerce.

\section*{IV. RICO Action Predicated on Extortion of Union Members' Rights}

Membership rights in labor unions guaranteed by the LMRDA are extortable property rights within the meaning of the Hobbs Act,\textsuperscript{152} and thus can constitute a predicate act of a RICO claim, where the other Hobbs Act and RICO requirements are met.\textsuperscript{153} The use of RICO to prosecute the extortion of union members' rights is important, moreover, because the civil RICO remedies\textsuperscript{154} are necessary in order to permanently rid the unions of the influence of organized crime.

\subsection*{A. Fulfillment of RICO Requirements}

A successful RICO cause of action requires that the government prove that the defendant ("person") acquired or maintained, through a pattern of racketeering activity, an interest in or control of an enterprise engaged in interstate commerce.\textsuperscript{155}

A "pattern" of racketeering activity requires at least two acts of


\textsuperscript{150} \textit{Local 560}, 581 F. Supp. 279, 334 (D.N.J. 1984), aff'd, 780 F.2d 267 (3d Cir. 1985) (Local 560 was a party to contracts with companies engaged in interstate shipment of commodities).

\textsuperscript{151} 627 F. Supp. 176, 179 (S.D.N.Y. 1985).

\textsuperscript{152} See \textit{supra} notes 114-32 and accompanying text.

\textsuperscript{153} See \textit{supra} notes 111-51, \textit{infra} notes 155-60 and accompanying text.

\textsuperscript{154} See \textit{infra} notes 161-73.


(b) [I]t shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or
racketeering\textsuperscript{156}—activity which is defined in the RICO statute and which specifically includes violations of the Hobbs Act.\textsuperscript{157} In the \textit{Local 560} case, the Hobbs Act extortion of union membership rights was one of several alleged RICO predicate acts\textsuperscript{158} which satisfied the “pattern of racketeering” requirement.\textsuperscript{159} In addition, the \textit{Local 560} court found that the requirements of a “person” and “enterprise” were suffi-

\begin{footnotesize}
\begin{enumerate}
\item It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities which affect, interstate or foreign commerce.

\item It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

\item It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

\item 18 U.S.C. § 1961(1) (1982). This section defines racketeering activity as:

\begin{enumerate}
\item any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under state law and punishable by imprisonment for more than one year;
\item any act which is indictable under any of the following provisions of title 18, United States Code: [§] 201 (relating to bribery) . . . [§] 664 (relating to embezzlement from pension and welfare funds) . . . [§] 1341 (relating to mail fraud), [§] 1343 (relating to wire fraud) . . . [§] 1951 (relating to interference with commerce, robbery, or extortion), [§] 1952 (relating to racketeering) . . .
\item any act which is indictable under title 29, United States Code, [§] 186 (dealing with restrictions on payments and loans to labor organizations) or [§] 501(c) (relating to embezzlement from union funds).
\end{enumerate}

The Supreme Court recently clarified the definition of a “pattern” as “at least two racketeering predicates that are related and that amount to, or threaten the likelihood of, continued criminal activity. Proof of neither relationship nor continuity requires a showing that the racketeering predicates were committed in furtherance of multiple schemes.” H.J. Inc. v. Northwestern Bell Telephone, Inc., 109 S.Ct. 2893, 2895 (1989).

\item See supra note 155.

\item United States v. Local 560, Int’l Bhd. of Teamsters, 581 F. Supp. 279, 284 (D.N.J. 1984), aff’d, 780 F.2d 267, 273 (3d Cir. 1985), cert. denied, 476 U.S. 1140 (1986). The Government alleged, and the court found, several predicate offenses committed by the Provenzano Group, including specific acts of bribery, extortion, murder and conspiracy. The district court in \textit{Local 560} enumerated the specific acts which formed the basis of the Hobbs Act allegation:

\begin{enumerate}
\item the repeated appointments of convicted criminals and persons reputed to be involved in criminal activity to positions of trust and responsibility within Local 560;
\item the expenditure of Local 560 assets in the form of increased salary and pension benefits to Anthony Provenzano, who has committed three criminal offenses while a member of Local 560’s executive board;
\item permitting the presence of convicted criminals and reputed criminals in the offices of Local 560;
\item and (4) the failure of the executive board to counter perceptions on the part of Local 560’s membership that it was unwise for the membership to voice dissatisfaction with executive board policy.
\end{enumerate}

780 F.2d at 274.

\item The court found that the Provenzano Group had since 1950 continuously conducted a pattern of racketeering activity. 581 F. Supp. at 306.
\end{enumerate}
\end{footnotesize}
ciently met. 160

B. RICO Civil Remedies For Extortion of Union Members' Rights

RICO provides a broad scope of relief to prevent and detain further RICO violations. 161 Specifically, the provision for civil remedies gives the court the power, at any time, to "enter . . . restraining orders or prohibitions, or take such other actions . . . as it shall deem proper." 162 Moreover, the drafters stressed that "[t]he provisions of this title shall be liberally construed to effectuate its remedial purposes." 163 Legislative history and court commentary on RICO emphasize that the statute "was intended to provide new weapons of unprecedented scope for an assault upon organized crime and its economic roots." 164

The remedies for union corruption which are available under civil RICO can be extremely effective. 165 The Local 560 case exemplifies

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160. Id. at 303. Under § 1962(b), the court found that the Provenzano Group was a "person" and that Local 560 was the "enterprise." Under § 1962(c), the individual defendants were "persons" and the Provenzano Group represented an "enterprise." Id. at 329-30.

The RICO statute defines a person as "any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C. § 1961(3) (1982). An enterprise "includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." Id. § 1961(4).

161. See infra note 162.

162. 18 U.S.C. § 1964(b) (1982). § 1964(a) allows for various forms of relief:

(a) The district courts of the United States shall have the jurisdiction to prevent and restrain violations of [§] 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.


165. Congress predicted that "[t]he civil remedies of this legislation . . . coupled with its heavy criminal penalties, should enable the government to take effective action to eliminate the serious threat posed to the safety and well-being of our democratic institu-
the kinds of remedies available in these cases.166 There the court ordered the removal from office of the executive board and its replacement with a temporary trustee "to remedy the abuses of the Provenzano Group and the executive board, and to ensure that the Local 560 members will be able to exercise fully their democratic rights."167 Moreover, in other RICO actions brought by the Government, the courts have emphasized the broad scope of remedies available to unions infiltrated by corrupting influences.168

Furthermore, the remedies available under RICO to restore democracy in corrupt unions are also more effective than the more limited sanctions available under both the Hobbs Act169 and the extortion


167. Local 560, 780 F.2d at 295. Rejecting the defendants' argument that removing the executive board and establishing a trusteeship was not within the power of the district court, the Third Circuit, in affirming the decision, emphasized the goal of § 1964(a) and stressed that "the only limit on remedies is that they accomplish the aim set out of removing the corrupting influence and make due provision for the rights of innocent persons." Id. (citing H.R. REP. No. 91-1549, 91st Cong., 2d Sess. 28, reprinted in 1970 U.S. CODE CONG. & ADMIN. NEWS 4007, 4034). The Trusteeship of Local 560 was put into effect in June 1986, and in December 1988, the local held its first election since the removal of the Provenzano Group. One commentator noted the effect the trusteeship has had on the local:

[e]ven if the old guard slate wins, the trusteeship has proven to be an effective course. Not only has it brought about the first genuinely contested election in 25 years, but it enabled the first of the anti-racketeer slates to muster a turnout of 600 at its rally. That is absolutely fantastic against the backdrop of murder, beatings and intimidation in this local.

N.Y. Times, Nov. 20, 1988, § 4 (Week in Review), at 6, col. 4; see also supra note 69.


169. 18 U.S.C. § 1951(a) provides for fines of not more than $10,000 or imprisonment of not more than 20 years, or both.
provision of the LMRDA. When Hobbs Act cases are prosecuted alone, and not as RICO predicate acts, the Government is limited to the imposition of fines and prison terms against union officials convicted of extorting the LMRDA rights of their members. Similarly, section 530 of the LMRDA, which punishes the intimidation of members into relinquishing their rights, does not remedy the pervasive corruption that the RICO remedies seek to address. As the court in Local 560 pointed out, the Hobbs Act was explicitly designed to remedy extortion, while section 530 of the LMRDA essentially "make[s] assault and battery a Federal crime . . . when it occurs in a union." The court emphasized further that "cases which have construed section 530 have all involved some form of assault and battery."

V. Conclusion

Democratic participation in a union means nothing if union officials can intimidate members into relinquishing their rights. Because membership rights are a source of wealth for union members, such rights constitute property rights which can be extorted. The Hobbs Act should be amended so that the property requirement of extortion specifically include the intangible right to democratic participation in a labor union guaranteed by the LMRDA in order to protect the Government's ability to prosecute corrupt union officials under RICO.

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170. Although this section does not mention extortion, defendants in the Local 560 case argued that § 530 of the LMRDA is an extortion statute in itself, which punishes conduct similar to that proscribed by the Hobbs Act. Because of the similarity in the language of the two sections, they argued that the Hobbs Act is preempted by § 530 of the LMRDA. Local 560, 780 F.2d at 282. 29 U.S.C. § 530 provides:

[i]t shall be unlawful for any person through the use of force or violence, or threat of the use of force or violence, to restrain, coerce, or intimidate, or attempt to restrain, coerce or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of this chapter. Any person who willfully violates this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

Id.

171. See supra note 8.

172. 780 F.2d at 282 (quoting Sen. Morse).

173. Id. at 283.