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UNION OFFICIALS AND THE LABOR BILL OF RIGHTS

INTRODUCTION

By the late 1950s, labor unions, with approximately seventeen million members, had become "a force to be reckoned with in American Society."1 Corruption in many of these organizations had become commonplace,2 leading Congress to enact the Labor-Management Recording and Disclosure Act of 1959 (the "LMRDA" or the "Act"), also known as the Landrum-Griffin Act.3

The Act was designed to correct the abuses in labor unions4 by mandating democratic forms of self-government,5 and included as part of the scheme a "Bill of Rights for Members of Labor Organizations," ("Title I" or the "Bill of Rights").6 Congress, however, did not intend the

2. There was public outcry against corruption in the unions that was exposed and documented by the Senate Select Committee on Improper Activities in the Labor Management Field, better known as the McClellan Committee. See S. Rep. No. 187, 86th Cong., 1st Sess. 70, reprinted in 1 NLRB, Legislative History of the Labor-Management Recording and Disclosure Act of 1959, at 466 (1985) (hereinafter 1 LMRDA Leg. Hist.) ("[T]he public is insistently demanding . . . Federal legislation designed . . . to assure some minimum measure of internal union democracy and an effective curb on the corruption and racketeering which the McClellan committee had revealed." (minority views)); see also infra note 32 and accompanying text.
4. See infra notes 31-36 and accompanying text.
6. See 29 U.S.C. §§ 411-412 (1982). Among the rights granted to union members by the Bill of Rights are equal rights, free speech and assembly, and due process. Sections 101(a)(1) and (2) of Title I provide:

(1) 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.
(2) 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.

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LMRDA to prevent the unions from maintaining reasonable rules for self-governance,\(^7\) and therefore tempered the goal to democratize the unions with a policy to avoid excessive interference into intra-union government.\(^8\)

The tension between these conflicting policies\(^9\) is especially evident with respect to the rights of appointed and elected union officials under the Bill of Rights. Courts have been divided for almost the entire history of the LMRDA\(^10\) about whether union officials in their capacity as officers\(^11\) are afforded any protection under the Bill of Rights,\(^12\) which refers only to union members. Some courts have held that union officials are protected under the Bill of Rights,\(^13\) while others have held to the contrary.\(^14\)

The Supreme Court attempted to eliminate this division in Finnegan v. Leu,\(^15\) when it held that absent a “deliberate attempt ... to suppress dissent within the union,”\(^16\) appointed union officials are not protected under Title I of the LMRDA, and therefore may be removed from office for voicing opposition to union policy.\(^17\)

Finnegan addressed both policies underlying the LMRDA, namely to

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3. See infra notes 37-39 and accompanying text.
4. The “dual spirit of [the] LMRDA [is] the desire to democratize unions [as a means to eradicate union abuses] while resisting extensive and unnecessary invasion of their independence.” Dolan v. Transport Workers Union, 746 F.2d 733, 740 (11th Cir. 1984).
5. For a discussion of whether the courts are currently divided over the issue of union officials’ rights under the LMRDA, see infra text accompanying notes 86-96.
6. There is no disagreement that all officers are protected under the Bill of Rights when exercising rights in their capacity as members and not as officers. See, e.g., Finnegan v. Leu, 456 U.S. 431, 437 (1982); Dolan, 746 F.2d at 742; Martire v. Laborers’ Local Union 1058, 410 F.2d 32, 35 (3d Cir.), cert. denied, 396 U.S. 903 (1969). Thus, while union officials may be removed from office for unpopular speech, they may not be removed from the union, or in any way have their rights as members affected. See, e.g., Finnegan, 456 U.S. at 436-38; Dolan, 746 F.2d at 743; Martire, 410 F.2d at 35.
7. Compare Bradford v. Textile Workers, 563 F.2d 1138, 1142-43 (4th Cir. 1977) (removal from union office for exercising Title I rights is unlawful discipline) with Dolan, 746 F.2d at 741 (Title I rights not extended to union officers in their official capacity) and Sheridan v. United Bhd. of Carpenters, Local 626, 306 F.2d 152, 157 (3d Cir. 1962) (Title I protects “the union-member relationship, not the union-officer ... relationship”).
8. Most commonly, union officers seek the protection of Title I when they have been removed from office for voicing opposition to union policy. See, e.g., Sheet Metal Workers Int’l Ass’n v. Lynn, 109 S. Ct. 639 (1989); Finnegan, 456 U.S. at 437; Dolan, 746 F.2d at 742 (11th Cir. 1984).
10. See, e.g., Newman v. Local 1101, Communications Workers, 570 F.2d 439, 442 (2d Cir. 1978); Wambles v. International Bhd. of Teamsters, 488 F.2d 888, 890 (5th Cir. 1974); Martire, 410 F.2d at 35.
12. Id. at 441 (quoting Schonfeld v. Penza, 477 F.2d 899, 904 (2d Cir. 1973)).
promote union democracy while not excessively interfering with intra-
union government.\textsuperscript{18} Nevertheless, the opinion only perpetuated the dis-
agreement over the rights of union officials.\textsuperscript{19} First, the Court was am-
biguous whether it was holding that all union officials could be removed
from office absent a deliberate attempt to suppress dissent or that only
appointed officials could be removed.\textsuperscript{20} Second, the Court failed to elab-
orate on the types of acts that constitute a deliberate attempt to suppress
dissent.\textsuperscript{21} Although as a practical matter, the distinction between ap-
pointed and elected union officials became less important after \textit{Finnegan},\textsuperscript{22} the lower courts differed greatly as to what constituted a deliberate
attempt to suppress dissent.\textsuperscript{23} Furthermore, as a result of the ambiguities
in the opinion, many courts after \textit{Finnegan} decided officer removal cases
without examining the competing considerations underlying the
LMRDA.\textsuperscript{24}

In response to the confusion remaining after \textit{Finnegan}, the Supreme
Court again attempted to clarify these issues in \textit{Sheet Metal Workers In-
ternational Association v. Lynn}.\textsuperscript{25} The Court held that elected union of-
icials state a cause of action for violation of their rights under the
LMRDA.\textsuperscript{26} The Court, however, did not discuss what impact its ruling
would have on appointed officials. Although the Court distinguished
elected officials, the Court did not state whether, as a general rule, ap-
pointed officials are barred from stating a cause of action, or only on facts
similar to \textit{Finnegan}.\textsuperscript{27} Moreover, the Court ignored congressional intent
not to interfere with unions' internal government.

This Note attempts to clarify the analysis for determining whether the
LMRDA Bill of Rights protects a union official. Part I of this Note
discusses the legislative history of the LMRDA, showing congressional
intent to promote union democracy while minimizing the legislation's

\textsuperscript{18} See \textit{infra} notes 52-54 and accompanying text.
\textsuperscript{19} See \textit{infra} notes 55-58 and accompanying text.
\textsuperscript{20} See \textit{infra} note 56 and accompanying text.
\textsuperscript{21} See \textit{Finnegan}, 456 U.S. at 436-37.
\textsuperscript{22} The majority of the courts of appeals after \textit{Finnegan} held that absent a deliberate
attempt to suppress dissent, both elected and appointed officials may be removed from
union office for exercising rights which would otherwise be afforded to members. See,
\textit{e.g.}, \textit{Brett v. Hotel, Motel, Restaurant, and Constr. Camp Employees and Bartenders
Union, Local 879, 828 F.2d 1409, 1416 n.11} (9th Cir. 1987) (elected official may be re-
moved in the absence of a deliberate attempt to suppress dissent); \textit{Adams-Lundy v. Asso-
ciation of Professional Flight Attendants, 731 F.2d 1154, 1159} (5th Cir. 1984) (same).
\textit{But see, e.g.}, \textit{Sullivan v. Laborers' Int'l Union, 707 F.2d 347} (8th Cir. 1983) (deliberate
attempt to suppress dissent standard not examined); \textit{Allen v. Allied Plant Maintenance
Co., 636 F. Supp. 1090} (M.D. Tenn. 1986) (same); see also \textit{infra} note 64.
\textsuperscript{23} \textit{Compare Brett, 828 F.2d at 1411} (deliberate attempt to suppress dissent existed
even though the union was unaware of plaintiff's views) \textit{with Adams-Lundy, 731 F.2d at
1159} (deliberate attempt to suppress dissent did not exist until the democratic structure
of the union was dismantled).
\textsuperscript{24} See \textit{infra} notes 72-85 and accompanying text.
\textsuperscript{25} 109 S. Ct. 639 (1989).
\textsuperscript{26} See \textit{id.} at 641.
\textsuperscript{27} See \textit{id.}
impact upon the unions' internal governance. Part II describes the application of Title I to union officials by the Supreme Court and the lower federal courts. Part III outlines criteria for a more balanced approach, and concludes that to further the goals of the LMRDA, courts should carefully examine the facts of the particular case, and grant relief to those union officials, whether appointed or elected, who were removed from office as part of a deliberate attempt to suppress dissent.

I. THE LEGISLATIVE HISTORY OF THE "BILL OF RIGHTS OF MEMBERS OF LABOR UNIONS"

Prior to the enactment of the LMRDA, many union leaders stayed in power by threatening dissenters with suspension from the union or with physical violence. The courts were nevertheless often unwilling to punish union leaders even when these union leaders assaulted members or destroyed their property in efforts to suppress the members' speech. As noted during the Senate debate on the LMRDA, one Pennsylvania court characterized these acts of violence as mere union "brawls" with which the courts should not interfere.

These intra-union abuses against the rank-and-file members were generally known by the early 1940s, but it was not until the late 1950s, after an investigation by the McClellan committee, that significant attention was paid to correcting them. Congress intended to end these

29. See id. at 6483, reprinted in 2 LMRDA Leg. Hist., supra note 28, at 1109.
30. See id. at 6484-85, reprinted in 2 LMRDA Leg. Hist., supra note 28, at 1111 (statement of Senator Morse). Senator Kennedy stated:

If Members of the Senate will go through the so-called Bill of Rights section by section, they will find that such rights are dealt with more effectively under State law . . . . It is not that we seek to deny freedom of speech to union members. The fact is that the basic principle is that if this amendment is adopted, I believe that rights which have been guaranteed by the States over a long period of time will be limited.

Id. at 6484, reprinted in 2 LMRDA Leg. Hist., supra note 28, at 1110-11.
31. See Rothman, Legislative History of the "Bill of Rights" for Union Members, 45 Minn. L. Rev. 199, 201 (1960) (noting that the American Civil Liberties Union first discussed abuses in unions in 1943).
32. Senator McClellan stated that the citizens "have been shocked and nauseated by the disclosures of impositions and abuses which have been perpetrated upon the working people of many of our States by the thugs who have muscled into positions of power in labor unions and who masquerade as labor leaders." 105 Cong. Rec. 6470 (1959), reprinted in 2 LMRDA Leg. Hist., supra note 28, at 1097; see also Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 820 (1960) ("Since World War II there had been a growing concern lest some unions . . . become too indifferent to democracy and the rights of minorities within the organization."); Rothman, supra note 31, at 204 (unlikely that there would have been pressure on Congress to regulate internal union affairs without McClellan investigation).
abuses by mandating that unions institute democratic systems of intra-
union government. Title I of the LMRDA provides union members with
rights similar to those stated in the Bill of Rights of the United States
Constitution including the rights of free speech and assembly. Congress
reasoned that granting members free speech and assembly rights
furthered the goal of democratizing the unions by allowing members to
expose the abuses and corruption in the unions without fear of reprisal.

Congress, however, sought to temper its broad goal of democratizing
the unions by limiting governmental interference with union govern-
ment. As stated by the Senate Committee on Labor and Public Welfare,
which examined this legislation, the guiding principles followed by
the committee included "the desirability of minimum interference by

33. See 105 Cong. Rec. 6470 (1959), reprinted in 2 LMRDA Leg. Hist., supra note 28, at 1097; S. Rep. No. 187, 86th Cong., 1st Sess. 2 (1959), reprinted in 1 LMRDA Leg. Hist., supra note 2, at 398 ("committee reported bill is primarily designed to correct the abuses which have crept into labor").

34. See 29 U.S.C. § 411 (1982). The legislative scheme of the LMRDA "Bill of Rights" is as follows: section 101(a)(1) of Title I guarantees union members free elections; section 101(a)(2) guarantees union members the rights to assemble and speak freely about union affairs; section 101(a)(5) guarantees intra-union due process rights to members. Congress provided for the enforcement of Title I rights in § 609 of Title VI, by making it unlawful for unions to discipline members for exercising rights protected under the Act, see 29 U.S.C. § 529 (1982) ("It shall be unlawful for any labor organization ... to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Chapter."), and gave the federal courts jurisdiction over Title I disputes, see id. § 412.

The courts were divided, prior to Finnegan, over the meaning of "discipline" under § 609 of Title VI. Compare Maceira v. Pagan, 649 F.2d 8, 13 (1st Cir. 1981) (section 609's prohibition of discipline includes removal from union office) and Wood v. Dennis, 489 F.2d 849, 853-54 (7th Cir. 1973) (same), cert. denied, 415 U.S. 960 (1974) and Grand Lodge of Int'l Ass'n of Machinists v. King, 335 F.2d 340, 345 (9th Cir.) (same), cert. denied, 379 U.S. 920 (1964) with Sheridan v. United Bhd. of Carpenters, Local 626, 306 F.2d 152, 156 (3d Cir. 1962) (removal of union official not discipline under § 609). For a complete discussion of discipline of union officials under the LMRDA prior to Finnegan, see Note, Union Members' Free Speech Guarantee: Does it Protect Against Discharge from Union Office?, 29 Buffalo L. Rev. 169 (1980).

The Supreme Court in Finnegan held that removal from union office could not constitute "discipline." See 456 U.S. at 438. The Court, focusing on the word "members," concluded that such removal from union office did not constitute "discipline" under § 609 because such a removal did not reduce the employee's membership status. See id. ("[D]ischarge from union employment does not impinge upon the incidents of union membership, and affects union members only to the extent that they happen also to be union employees." (citing Sheridan v. United Bhd. of Carpenters, Local 626, 306 F.2d 152, 156 (3d Cir. 1962), an elected official removal case)). However, the Court was not willing to exclude the possibility that officers could not state a cause of action under section 102, which refers to "persons." See id. at 439.

35. The Bill of Rights in the United States Constitution could not protect union members from such abuses because it only prohibits governmental deprivation of these rights. See, e.g., Burton v. Wilmington Parking Auth., 365 U.S. 715, 721-22 (1961); The Civil Rights Cases, 109 U.S. 3, 11 (1883).


Government in the internal affairs of any private organization,"38 and "oppos[ing] any attempt to prescribe detailed procedures and standards for the conduct of union business."39

This intent to minimize governmental interference with the internal running of unions manifests itself in the standards applicable to Title I rights.40 To ensure that the LMRDA would not "unduly harass and obstruct legitimate unionism,"41 Congress restricted Title I rights and permitted the unions to adopt and enforce reasonable rules.42 Unions need only establish the reasonableness of their rules in order to permissibly limit their members’ rights.43 As stated by Archibald Cox, one of the leading commentators on the LMRDA, "dissent in a union . . . must be suppressed if the purpose is to destroy the union, encourage a rival, or

Hist., supra note 2, at 401, 403 ("In providing remedies for existing evils the Senate should be careful [not to] undermine self-government within the labor movement.")

The basis for the congressional policy of non-interference was articulated many years later by the Second Circuit Court of Appeals:

Unless the management of a union, like that of any other going enterprise, could command a reasonable degree of loyalty and support from its representa-
tives, it could not effectively function very long. To obligate union leadership to tolerate open defiance of, or disagreement with, its plans by those responsible for carrying them out, would be to invite disaster for the union.


39. Id.; see also Dolan v. Transport Workers Union, 746 F.2d 733, 739 (11th Cir. 1984) ("Exerting a countervailing force to Congress’ desire to legislate union democracy was a . . . policy against government interference with the internal affairs of unions."); Cox, supra note 32, at 831 ("Senator Kennedy and his advisors were acutely aware of what they deemed the risks of destroying self-government within the labor unions.").

40. See infra note 42 and accompanying text.


43. See 29 U.S.C. § 411 (a)(2) (1982) (nothing in the LMRDA Bill of Rights can “be construed to impair the right of a labor organization to adopt and enforce reasonable rules”); see also Sadowski, 457 U.S. at 111 (Congress did not intend for the rights under § 101(a)(2) of the LMRDA to be co-extensive with the first amendment); Dolan v. Transport Workers Union, 746 F.2d 733, 740 (1984) ("The ‘Bill of Rights of Members of Labor Organizations’ confers specific rights that are more limited than their shorthand names—‘free speech’ and ‘due process’—might suggest."); 105 Cong. Rec. 6718-19 (1959), reprinted in 2 LMRDA Leg. Hist., supra note 28, at 1230-32 (statement of Senator Kuchel regarding “reasonable restraints on the right of free speech”).
bring about the violation of legal or contractual obligations." In contrast, the rights granted in the Bill of Rights of the United States Constitution generally may not be abridged, unless federal and state governments have a compelling reason with no less restrictive alternatives.

II. OFFICER RIGHTS AS INTERPRETED BY THE COURTS

Suits brought by union officers under the LMRDA Bill of Rights reflect "the recurring problem of accommodating two conflicting policies: the policy that the courts should abstain from interfering with the internal management of labor unions and the policy that courts should protect fundamental rights of individual labor union members." Frequently, however, courts fail to balance these conflicting policies, favoring one over the other.

A. Finnegan v. Leu

In Finnegan v. Leu, the Supreme Court held that appointed union officials were not protected under Title I of the LMRDA, absent "a purposeful and deliberate attempt . . . to suppress dissent within the union." The Court, however, was unclear whether its holding applied to all officials or only to appointed officials, and neglected to define what constitutes a deliberate attempt to suppress dissent.

Finnegan involved the patronage system in union governance. The plaintiffs, officials appointed by the incumbent union president, openly supported him in his unsuccessful bid for re-election. After the election, fearing disloyalty, the new president fired the prior president's appointees. These appointees then sued in federal court under section 102 of the LMRDA, claiming they were fired for exercising their free speech rights, which are protected by section 101(a)(2) of the LMRDA.

The Supreme Court reconciled the conflicting policies underlying the LMRDA. The Court recognized that union democracy was the LMRDA's "overriding objective," and reasoned that for union leaders

44. Cox, supra note 32, at 834-35; see also Rothman, supra note 31, at 201 ("union[s] must retain sufficient disciplinary powers to prevent minority and opposition groups from undermining [their] effectiveness" (citing ACLU, Democracy in Trade Unions (1943))).
46. Sewell v. Grand Lodge of the Int'l Ass'n of Machinists, 445 F.2d 545, 546 (5th Cir. 1971), cert. denied, 404 U.S. 1024 (1972); see also supra note 9.
47. 456 U.S. 431 (1982).
48. Id. at 441 (quoting Schonfeld v. Penza, 477 F.2d 899, 904 (2d Cir. 1973)).
49. See id. at 440-41.
50. See id. at 432-33.
51. See id. at 433-34.
52. Id. at 441.
to be responsive to the will of the members, newly elected officials must be free to select staff with views that are compatible not only with their own, but also with the "mandate of the union election." Notwithstanding this holding, the Court showed deference to the countervailing goal of the Act not to interfere excessively in the internal affairs of unions by noting that nothing in the Act indicated that Congress intended to change the method of running the union.

The Court’s holding that a newly elected official may remove the appointees of the past administration is reasonable. Finnegan, however, did not accomplish what it intended to do. Although it set out to resolve the circuit conflicts, it gave no meaningful guidance to the lower courts in deciding officer removal cases. First, the Court’s holding was unclear whether, as a general rule, all union officials cannot state a claim under Title I, or only appointed officials cannot state a claim. Second, the Court applied the “deliberate attempt to suppress dissent” standard without defining it. As a result, lower courts developed greatly differing standards.

Moreover, although the Court reached its decision by balancing both policies of the LMRDA, the language in Finnegan caused many lower courts to deny Title I rights to all officials without an examination of the policies underlying the Act and the specific circumstances surrounding

53. Id.
54. Id. at 442; see also Dolan v. Transport Workers Union, 746 F.2d 733, 741 (11th Cir. 1984) (noting Finnegan’s reluctance to allow § 411(a)(2) to be used to interfere with a union’s intra-management policy of personnel decisions).
55. See Finnegan, 456 U.S. at 433.
56. At certain points, for example, the Court was clearly referring only to appointed officials, but at other points the Court seemed to be framing the issue in a manner so that neither elected nor appointed officials could state a cause of action for violation of rights granted under the LMRDA Bill of Rights. Compare Finnegan, 456 U.S. at 439 (“We hold . . . removal from appontive union employment is not within the scope of . . . § 609.” (emphasis added)) with id. at 436-37 (Congress’ reference to only members’ indicates that only members’ rights are protected).

The Court also cited lower court cases regarding both appointed and elected officials without distinguishing between them. See, e.g., id. at 433 n.1 (citing nine conflicting cases which concerned both elected and appointed officials); id. at 440 (citing Retail Clerks Union Local 648 v. Retail Clerks Int’l Ass’n, 299 F. Supp. 1012 (D.D.C. 1969), a case concerning removal of officials whose status as elected or appointed is unclear); id. at 441 n.12 (citing Wood v. Dennis, 489 F.2d 849 (7th Cir. 1973) (en banc) (a case concerning removal of an elected official), cert. denied, 415 U.S. 960 (1974)).

As a result of this uncertainty in the Finnegan opinion, confusion persisted in the lower courts after Finnegan. Compare Adams-Lundy v. Association of Professional Flight Attendants, 731 F.2d 1154, 1157-58 (5th Cir. 1984) (“Our task today is to fill one of the gaps deliberately left by the Court in Finnegan. We must determine whether the suspension of an elected union officer can give rise to a claim under §§ 101 and 102.”) with Local 314, Nat’l Post Office Mail Handlers v. National Post Office Mail Handlers, 572 F. Supp. 133, 137 (E.D. Mo. 1983) (Finnegan holding applies to both elected and appointed officials because Court granted certiorari to resolve conflicts in the circuits concerning both elected and appointed officials).
57. See Finnegan, 456 U.S. at 441.
58. See infra notes 65-85.
the removal of the particular official. The Court based its holding in part on the reference in the Bill of Rights only to members, stating that because Title I refers solely to "members," Congress intended to protect only members. Although the statute does refer only to "members," denying officers these rights in some situations undermines the policy of the LMRDA to promote union democracy. As one court put it, "Those who hold responsible offices in a labor organization may well be in the best position effectively to challenge the incumbent group which ... seeks to be entrenched."

59. See, e.g., Adams-Lundy v. Association of Professional Flight Attendants, 731 F.2d 1154 (5th Cir. 1984). Adams-Lundy is a clear example of a case in which the court did not properly address the underlying goal of the LMRDA to democratize the union. The court stated that the plaintiffs could not prove that they were removed from office as part of a deliberate attempt to suppress dissent merely because the defendants' actions were anti-democratic. See id. at 1159.

In Adams-Lundy, plaintiffs and defendants were the elected officials of rival factions to the governing board in a union, and over the years power had shifted between the two factions. See id. at 1156. The defendants, the minority members of the governing board, proposed tests to determine loyalty to their union as opposed to a rival union that was supported by the plaintiffs, majority members of the board. See id. The motions were for the most part defeated, but the defendants filed charges against the plaintiffs for disloyalty to the union. See id. Since the defendants did not allow the plaintiffs to vote on the issue of the charges because of the plaintiffs' bias, the motion to suspend plaintiffs carried. See id. Thus, the plaintiffs were implicitly removed from their office because of their exercise of free speech.

Plaintiffs argued that their removal resulted in an infringement of the membership rights of the members who had voted them into office, since the will of the electorate was ignored. See id. at 1159. The Fifth Circuit Court of Appeals dismissed plaintiffs' argument by holding that this was merely an "indirect" interference with membership rights, and that there was no indication that "defendants pose[d] any threat to the future conduct of free elections for union office." Id.

60. See Finnegan, 456 U.S. at 436-37. The Court in Finnegan stated: Sections 101(a)(1) and (2) of the Act, 29 U.S.C. §§ 411(a)(1) and (2), on which petitioners rely, guarantee equal voting rights, and rights of speech and assembly, to "[e]very member of a labor organization". ... It is readily apparent, both from the language of these provisions and from the legislative history of Title I, that it was rank-and-file union members—not union officers or employees, as such—whom Congress sought to protect.

Id. (footnote omitted) (emphasis in original).


61. Retail Clerks Union, Local 648 v. Retail Clerks Int'l Ass'n, 299 F. Supp. 1012, 1021 (D.D.C. 1969); see also Lynn v. Sheet Metal Workers' Int'l Ass'n, 804 F.2d 1472,
B. Circuits Conflict After Finnegan

After Finnegan, cases concerning the removal of officers from their union positions for exercising Title I rights appear to turn on the distinction of whether the officer was elected or appointed. Some courts held that neither appointed nor elected officials were protected under Title I, whereas other courts appear to have held that elected, but not appointed officials, were afforded Title I rights. A closer examination of these cases, however, reveals that the elected/appointed distinction in these cases is not very meaningful. Elected union officials, like appointed officials, were protected under the "Bill of Rights" only when they were removed as part of an attempt to suppress dissent. The true distinction in these cases was, therefore, not whether the plaintiff was elected or appointed to his office, but rather how the courts defined the attempt to suppress dissent standard first delineated in Schonfeld v. Penza.

In Schonfeld, the plaintiffs, an elected official and the members who voted for him, brought suit under Title I after the elected official was removed from office. The Second Circuit held that Title I "protects the union-member relationship, but not the union-official relationship,... and that... removal from union office gives rise to no rights in the

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1479 (9th Cir. 1986) (officer speaks "not only for himself as a member, but also as a representative of those members who elected him"), aff'd, 109 S. Ct. 639 (1989); Grand Lodge of Int'l Ass'n of Machinists v. King, 335 F.2d 340, 344 (9th Cir.) ("To exclude officer-members from their coverage would deny protection to those best equipped to keep union government vigorously and effectively democratic."), cert. denied, 379 U.S. 920 (1964).

62. See, e.g., Dolan v. Transport Workers Union, 746 F.2d 733, 741 (11th Cir. 1984); Adams-Lundy, 731 F.2d at 1159.

63. See, e.g., Brett v. Hotel, Motel, Restaurant, Constr. Camp Employees and Bartenders Union, Local 879, 828 F.2d 1409, 1414-15 (9th Cir. 1987); Lynn v. Sheet Metal Workers' Int'l Ass'n, 804 F.2d 1472, 1478 (9th Cir. 1986), aff'd, 109 S. Ct. 639 (1989).

64. Compare Adams-Lundy v. Association of Professional Flight Attendants, 731 F.2d 1154, 1158-59 (5th Cir. 1984) (elected officer "should not have his complaint dismissed... if it might support a claim that his firing was part of a pattern of intimidation and stifled dissent") with Brett, 828 F.2d at 1416 n.11 ("We do not hold an elected official always has a cause of action. Instead, we... hold that... an elected official has a cause of action when he or she suffers a retaliatory removal which occurred as a... deliberate attempt to suppress dissent within the union.").

Although the Supreme Court in Finnegan held that Title I of the LMRDA protects appointed union officials who were removed from office as part of an attempt to suppress dissent in the union, a minority of lower courts state that Finnegan held that no union official can state a cause of action under the LMRDA Bill of Rights, regardless of the surrounding circumstances. See, e.g., Sullivan v. Laborers Int'l Union, 707 F.2d 347, 350 (8th Cir. 1983); Allen v. Allied Plant Maintenance Co., 636 F. Supp. 1090, 1096-97 (M.D. Tenn. 1986); Local 314, Nat'l Post Office Mail Handlers v. National Post Office Mail Handlers, 372 F. Supp. 133, 135-38 (D. Mo. 1983). These courts therefore do not analyze whether the plaintiff was removed as part of an attempt to suppress dissent.

65. See, e.g., Brett, 828 F.2d at 1416 n.11 (9th Cir. 1987); Lynn v. Sheet Metal Workers' Int'l Ass'n, 804 F.2d 1472, 1478 (9th Cir. 1986), aff'd, 109 S. Ct. 639 (1989); Adams-Lundy, 731 F.2d at 1159.

66. 477 F.2d 899 (2d Cir. 1973).

67. See id. at 900-01.
removed official as an official under the Act."  The court held, however, that the plaintiffs stated a valid cause of action under section 101(a)(2) because, given a "lengthy history of intra[union] warfare," there was a "purposeful and deliberate attempt . . . to suppress dissent within the union." The court examined such factors as union factionalism and the history of dissent in the union in determining that the plaintiff was removed as part of a deliberate attempt to suppress dissent. Hence, the union official's status as elected or appointed was not the dispositive factor.

Two decisions in the Fifth and Ninth Circuit Courts of Appeals subsequent to Finnegan illustrate the different approaches used to determine whether the plaintiff was removed from office pursuant to a deliberate attempt to suppress dissent. Neither approach balances the policy of the LMRDA of promoting union democracy with the policy of minimizing interference with the union's internal government. The Fifth Circuit tips the scale in favor of non-interference, whereas the Ninth Circuit favors union democracy.

The Fifth Circuit, in Adams-Lundy v. Association of Professional Flight Attendants, acknowledged that the "primary objective of the LMRDA is that of 'ensuring that unions would be democratically governed and responsive to the will of their memberships.'" However, the court implicitly emphasized the congressional intent not to meddle in union affairs over the intent to democratize the unions. It held that, as long as defendants' action did not "pose any threat to the future conduct of free elections for union office," antidemocratic conduct by the defendants was insufficient for the plaintiffs to prove an attempt to suppress dissent. The court reasoned that even if the members' chosen representatives are removed from office for voicing views that express the sentiment of the members, there is no deliberate attempt to suppress dissent if the members have the ability to vote out of office the officers who abused their power by removing these officers.

In contrast to the Fifth Circuit approach, the Court of Appeals for the Ninth Circuit did not give much weight to the congressional goal of non-interference with the internal affairs of the union. It held that the deliberate attempt to suppress dissent standard was met in a case in which the union was unaware that the plaintiff supported policies that the union

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68. Id. at 904 (emphasis in original).
69. Id.
70. Id.
71. See id. at 903.
72. 731 F.2d 1154 (5th Cir. 1984); see also supra note 59 (discussing Adams-Lundy).
73. Adams-Lundy, 731 F.2d at 1156 (quoting Finnegan v. Leu, 456 U.S. 431, 436 (1982)).
74. Adams-Lundy, 731 F.2d at 1159.
75. Id. see also supra note 59.
76. See Adams-Lundy, 731 F.2d at 1158-59.
77. See id. at 1159.
opposed. In *Brett v. Hotel, Motel, and Construction Camp Employees and Bartenders Union, Local 879,* the plaintiff, Brett, was a union steward, as well as a member in the union with low seniority. She lost her position as steward after the incumbent business agent whom she supported was defeated, and she was subsequently laid off. As an officer, Brett would have been immune from the impending layoffs. Brett claimed that her removal was part of an effort "to purge [the incumbent business agent] and her supporters from positions in Union leadership." The union claimed that they were unaware that Brett supported the incumbent, and that Brett was removed from office because "layoffs were soon to come and 'it would be in the best interest of the members' to appoint a member with high seniority." Clearly, the union had a legitimate concern about ensuing unrest among members with higher seniority who would have lost their jobs instead of Brett. Furthermore, even if Brett were removed for speaking out against the union, "the ability of an elected union [official] to select his own administrators is an integral part of ensuring a union administration's responsiveness to the mandate of the union election."

Both of these approaches are flawed in that neither balances the congressional intent in enacting the LMRDA to institute democracy within the unions with the congressional intent not to interfere with the internal union government to any greater extent than necessary.

C. Sheet Metal Workers' International Association v. Lynn

The Supreme Court, in *Sheet Metal Workers' International Association v. Lynn,* recently attempted to resolve the problems left by *Finnegan* by making it clear that officials cannot be denied rights under Title I of the Act if doing so will affect members' rights in any way. In *Lynn,* an elected official in a financially crippled Local lost his position because he opposed a dues increase. Lynn brought suit in federal court under section 102 of the LMRDA for violation of his right of free speech under

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78. See *Brett v. Hotel, Motel, Restaurant, Constr. Camp Employees and Bartenders Union, Local 879,* 828 F.2d 1409, 1414-15 (9th Cir. 1987).
79. 828 F.2d 1409 (9th Cir. 1987).
80. See id. at 1411. Although Brett was initially elected to her office, she resigned because of illness. It was unclear whether she was reinstated to her elected office or appointed to the position upon her return. See id.
81. See id. at 1412.
82. *Id.*
83. See id. at 1416.
84. *Id.* at 1412.
87. See id. at 644-45.
88. See id. at 642. Lynn was an active member of a group that researched how to best alleviate the financial ills of the Local. This group determined that these problems could be solved by a reduction of the union's expenses, not an increase of dues, and the majority of the Local's members apparently agreed by voting against increased dues on several occasions. Thereafter, the International placed the Local under trusteeship. The trustee,
section 101(a)(2) of the Act. The Court of Appeals for the Ninth Circuit held that an elected union official states a cause of action under Title I if his removal from office was the result of a deliberate attempt to suppress dissent, and found that Lynn met this standard. The Supreme Court affirmed.

The Court noted that there need not be a history of suppression for an officer to state a cause of action under Title I. Rather, officer removal cases "must be judged by reference to the LMRDA's basic objective: 'to ensure that unions [are] democratically governed, and responsive to the will of the union membership as expressed in open and periodic elections.'" Lynn's removal denied the union members the representative of their choosing, and chilled not only his Title I free speech rights, but also the rights of the members who voted for him. Hence, Lynn stated a cause of action under the LMRDA.

Although the Court correctly determined that Lynn's removal affected not only his Title I rights, but also those of the members, the opinion is flawed for several reasons. First, the Court failed to balance the need for union democracy against the conflicting objective of the LMRDA of non-interference with the unions' affairs. Second, the Court offered little guidance for lower courts in deciding officer removal cases in the future. The Court was unclear whether it was merely deciding this case on its facts, or if "resolution of cases like this turn on whether an officer is elected or appointed," or if Finnegan is limited to its own facts and that all officials are protected under Title I of the LMRDA except in the few cases with facts identical to Finnegan. The only certain result after Lynn is that the lower courts will not be any more consistent in determining the rights of union officials than they were before this decision.

favoring a dues increase, asked Lynn for his support. Lynn spoke out against it. After the increase was defeated, Lynn was removed from office. See id.

89. See Lynn v. Sheet Metal Workers' Int'l Ass'n, 804 F.2d 1472, 1478-79 (9th Cir. 1986), aff'd, 109 S. Ct. 639 (1989). The court also noted that the plaintiff's removal from office infringed his right as a member under Title I to speak out against the union. See id. at 1478.

90. See Lynn, 109 S. Ct. at 641.

91. See id. at 645 n.7. In presenting its case, the union argued that the attempt to suppress dissent standard was met with only proof of a history of suppression. See id. The Court apparently agreed that the definition of deliberate attempt encompassed only a history of suppression, but disagreed with the union's position that the only way for an official to state a cause of action under Title I was if the official could prove a history of dissent. See id.

92. Id. at 644 (quoting Finnegan v. Leu, 456 U.S. 431, 441 (1982)).

93. See id. at 645.

94. See supra note 46 and accompanying text.

95. Lynn, 109 S. Ct. at 647 (White, J., concurring).

96. See id. at 644 ("We held that the business agents [in Finnegan] could not establish a violation of § 102. . . . We thus concluded that the LMRDA did not 'restrict the freedom of an elected union leader to choose a staff whose views are compatible with his own.'") (quoting Finnegan v. Leu, 456 U.S. 431, 441 (1982)).
III. Balanced Approach to the Determination of Union Officials’ Rights

In determining the rights of union officials under the LMRDA, courts often stress either the policy of the LMRDA to promote union democracy, or the conflicting policy of minimizing governmental interference with internal union affairs. Lower courts, however, should balance the two goals of the LMRDA by looking at the circumstances surrounding the plaintiff’s removal from office. This may be accomplished by a rule that all officials, elected and appointed, are protected by the Act in cases in which they were removed from office as part of a deliberate attempt to suppress dissent.

In defining this standard, an attempt to suppress dissent does not exist “every time a political dispute occurs in a union . . . . But federal courts need not necessarily wait to intervene until some sanction is directly imposed on union dissidents, for once suppressed ‘the democratic spirit’ within a union ‘may not soon be revived.’” Some factors, such as a possible history of union factionalism, or whether the officer was acting as a spokesperson for the rank-and-file members, would weigh in favor of the LMRDA’s policy of union democracy.

Where the union has legitimate reasons for removing the officer, these reasons would tip the scale in favor of the policy of minimal interference into the union’s internal government. For instance, in cases in which the union can show that the officer lacked the qualifications for the position, or that the officer was corrupt, deference should be paid to the

97. See supra notes 62-94 and accompanying text.
98. The Second Circuit has held that, in order for union officer plaintiffs to prevail in Title I suits, they must present clear and convincing evidence of a deliberate attempt to suppress dissent. See Cotter v. Owens, 753 F.2d 223, 229 (2d Cir. 1985).
100. See Schonfeld, 477 F.2d at 903.
101. For example, “[u]nder certain circumstances, a union official can become a symbol for a movement, and discipline of that single official is thus converted into ‘a form of intimidation of the membership.’” Local 1199, Drug, Hosp. and Health Care Employees Union v. Retail, Wholesale, and Dep’t Store Union, 671 F. Supp. 279, 287 (S.D.N.Y. 1987) (citing Cotter, 753 F.2d at 223); see also Lynn v. Sheet Metal Workers’ Int’l Ass’n, 804 F.2d 1472, 1479 (9th Cir. 1986) (“an elected officer . . . speak[s] not only for himself as a member, but also as a representative of those members who elected him.”), aff’d, 109 S. Ct. 639 (1989). But see Franzia v. International Bhd. of Teamsters, Local 671, 680 F. Supp. 496, 497-98 (D. Conn. 1988) (plaintiff supported a candidate that the rank-and-file did not support), aff’d, 869 F.2d 41 (2d Cir. 1989).
102. See Franzia, 680 F. Supp. at 498 (plaintiff lacked qualifications needed to perform duties).
103. See Franzia, 680 F. Supp. at 497-98 (plaintiff allegedly removed from office for breaching fiduciary duties and for receiving salary and perquisites for rendering services unrelated to union). Although in enacting the LMRDA Congress did not contemplate situations in which the goal of ending corruption in the unions would be furthered by
union’s decision to remove the plaintiff from the office.104

The removed officer’s status as elected or appointed is a factor that could tip the scale in favor of either the policy to advance union democracy or the policy to minimize interference with the union government. For example, “[o]uster of an elected official undeniably poses a greater potential threat to [the] LMRDA’s broad goal of democratizing unions,”105 because the rank-and-file members are deprived of their chosen representative.106 In some situations, however, such as where the officer was voted out of office,107 the removal of an elected official furthers this goal. In other situations, the removal of an appointed official frustrates the goal of the LMRDA to promote union democracy.108

A recent case illustrates this balanced approach to the deliberate attempt to suppress dissent standard. In Local 1199, Drug, Hospital and Health Care Employees Union v. Retail, Wholesale and Department Store Union,109 the plaintiff, who was the secretary-treasurer110 of his union’s local and the leader of his Local’s Executive Council, headed a faction in his union that was struggling to gain control.111 At the height of this political battle, the president removed the plaintiff from his office.112 The court correctly focused on whether the plaintiff’s removal from union office was “merely an isolated act of retaliation for political disloyalty,”113 or rather an action that had an impact on the union as a

emphasizing the policy of minimal interference with union government, such a situation is possible.

104. For another example in which the union had a legitimate reason for removing an officer, see Brett v. Hotel, Motel, Restaurant, Constr. Camp Employees and Bartenders Union Local 879, 828 F.2d 1409, 1412 (9th Cir. 1987) (plaintiff removed out of concern over potential unrest due to overriding the seniority system).


106. See supra notes 79-85 and accompanying text.


108. An illustration of a case in which the removal of an appointed official frustrated the goal of the LMRDA to democratize unions is Cotter v. Helmer, No. 88 Civ. 5710 (S.D.N.Y. Aug. 26, 1988). In Cotter, the plaintiff and his dissident party opposed their union’s leadership for many years. Cotter unsuccessfully ran for union office several times, but in the last election in which he ran he received 45 percent of the vote. In response to the dissident faction’s significant following, Cotter was appointed to an office. The following year, Cotter was directed not to have any contacts with his dissident faction, and although Cotter followed these instructions, he was nevertheless stripped of all his duties. The court noted that “[g]iven the apparent history of suppression of freedom of speech within Local 1-2, it is clear that the issue in this case is broader than Cotter’s interest in retaining his union position.” Id.; see also Cotter v. Owen, 753 F.2d 223, 230 (2d Cir. 1985) (appointed official case remanded to determine whether plaintiff removed as part of a deliberate attempt to suppress dissent).


110. The opinion does not state whether plaintiff was appointed or elected to this position. See id. at 281-84.

111. See id. at 281.

112. See id. at 287.

113. Id. (quoting Cotter v. Owens, 753 F.2d 223, 230 (2d Cir. 1985)).
whole. Because the plaintiff was a "symbol for a movement," his removal deprived the members of their free speech rights, and was therefore a violation of the LMRDA.

CONCLUSION

In deciding officer removal cases under the LMRDA Bill of Rights, courts should balance the underlying policies of the LMRDA to promote union democracy as a means to curb union corruption, while not interfering excessively with union government. Courts should make a case-by-case analysis whether the official was removed from office as part of a deliberate attempt to suppress dissent. To make this determination, courts should examine such factors as plaintiff’s status as elected or appointed, the relationship of the plaintiff with the membership, the history of dissent in the union, and any legitimate reasons that the union might have for having removed the plaintiff from office. Courts should find that an official’s rights under the LMRDA Bill of Rights have been violated before the unions’ democratic system is dismantled, but should not find that an officer’s rights were violated by the mere fact that an official was discharged.

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114. See id.
115. See id. at 287-88.