1960

Legislative History of the Bill of Rights for Union Members

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Legislative History of the "Bill of Rights" for Union Members

Ever since passage of the Landrum-Griffin Act there has been a need for expert guidance through the legislative forest surrounding Title I of the act—the "Bill of Rights" for union members. In this Article, Mr. Rothman guides us through the reform movements that preceded legislative action, surveys the general legislative history of Title I, examines in detail the history of each section of Title I, and concludes with an analysis of the history of the remedial provisions. For those readers who must make an exhaustive analysis of particular provisions of the act, Mr. Rothman and his staff have thoughtfully appended a topical and sectional index to the Legislative History published by the NLRB in 1959.

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INTRODUCTION

The Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959[1] guarantees certain rights of union members in Title I, entitled "Bill of Rights of Members of Labor Organizations." These rights are set forth in section 101(a), which has five subsections dealing with the following subjects: equal rights; freedom of speech and assembly; dues, initiation fees and assessments; the right to sue; and disciplinary action. Section 102 provides that aggrieved members may bring civil actions in federal district courts.

Immediately upon the passage of the act by Congress, the Office of the General Counsel of the National Labor Relations Board

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1. Public Law 86–257 (Sept. 14, 1959); 73 Stat. 519 (1959).

(NLRB) commenced the collection and preparation for publication of the documents and debates which constitute the legislative history of the act. This agency was primarily concerned with those provisions (embodied, for the most part, in Title VII of the act) which amend the Labor Management Relations (Taft-Hartley) Act of 1947. The agency wished to complete and publish a legislative history of the amending provisions as quickly as possible for the information and assistance of persons affected by the amendments, as well as for the agency's own needs in connection with the administration of the amendments. Consequently, the two-volume *Legislative History* that was published by this agency in 1959[2] indexed by topic and section only that part of the legislative materials relating to the Title VII amendments; with few exceptions, the indexes do not cover materials relating to Titles I through VI of the act.

The Department of Labor, which is primarily responsible for the administration of Titles II through VI, has compiled a legislative history of Titles I through VI. However, this legislative history has not been published and made available to the public as has the NLRB's *Legislative History*.

Title I, the so-called "Bill of Rights" of union members, is not administered by any federal department or agency; it is enforceable by civil suits instituted by aggrieved union members. In view of this lack of an administrative agency to which the public may look for interpretation of Title I—coupled with the absence of any published legislative history of the Title—it was considered that the publication of a topical and sectional index, with page references to the NLRB's *Legislative History*, would be a service to the public and particularly to those affected by the Title. Such an index has been prepared and is appended hereto.[3]

It is rare for any important piece of legislation to be written in such clear, unambiguous language that resort to legislative history is not necessary, or at least appropriate, to determine what the language was intended to mean. In this respect, the Bill of Rights of union members is no exception. It is hoped that this Article and the index which accompanies it will help to show what Congress had in mind when it enacted the provisions which comprise the Bill of Rights.

2. LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 [hereinafter referred to as LEG. HIST.].

3. See Appendix A.

I. PRE-LEGISLATIVE ORIGINS OF THE BILL OF RIGHTS

Although, strictly speaking, the legislative history of the Bill of Rights begins with the consideration of labor reform bills by Congress in 1959, this history is more meaningful if reference is made not only to prior congressional activity in the field, but also to non-congressional consideration and discussion of similar proposals.

Therefore, it may not be too much to say that the 1959 Bill of Rights was conceived as long ago as 1943. It was in that year that the American Civil Liberties Union (ACLU) published an 86-page pamphlet, entitled *Democracy in Trade Unions*, which embodied the results of a survey by the ACLU's Committee on Trade Union Democracy. The stated purpose of the Committee, which had been created two years previously, was "to study trade union practices and to suggest remedies for undemocratic procedures which denied to trade union members what may fairly be called their civil rights."[4]

The Committee's report was devoted to the following topics: the closed union, restrictions on admission to trade unions, disciplinary action by trade unions, division of power, and how union policies are made. In the chapter dealing with disciplinary action, the report argued that while a union must retain sufficient disciplinary powers to prevent minority and opposition groups from undermining its effectiveness, members should not be penalized or expelled for activities involving the following "basic democratic rights": (1) the right to criticize union officers; (2) the right to inform fellow members of their opposition; (3) the right to organize groups within the union to oppose the administration; and (4) the right—where information channels within the union are closed—of voicing protests outside the union.[5] In another section of the report, the right of free speech in unions was found to be inadequately protected.[6]

The Committee recommended a "Bill of Rights" for union members which was basically concerned with guaranteeing the right to membership in a union, the right of democratic participation in the conduct of the union, the right to protection against arbitrary disciplinary proceedings, and the right to fair and equal treatment as to placement in jobs controlled by the union.[7] The "best implementation" of these guarantees was to have been obtained

4. AMERICAN CIVIL LIBERTIES UNION, DEMOCRACY IN TRADE UNIONS 8 (1943).
5. *Id.* at 28–29.
6. *Id.* at 53–55.
7. *Id.* at 68–69.

through the constitutions, rules, and regulations of the unions themselves, supplemented by very limited state and federal legislation and by continued resort to the courts.[8]

During the 1947 House Labor Committee hearings on proposed amendments to the National Labor Relations (Wagner) Act, the ACLU submitted a "Bill of Rights" as a draft amendment to that Act.[9] The proposed amendment was primarily intended to assure "open" unions, regular and fair elections, full accounting of union funds, and protection of union members in their exercise of free speech in opposition to union leadership. Enforcement was to have been vested in the NLRB, which would have been empowered to revoke or condition certifications and to make unfair labor practice findings on the basis of charges brought by union members or applicants for membership.[10]

In 1952 the ACLU published another report entitled *Democracy in Labor Unions.* This report was prepared by Professor Clyde W. Summers, who has for many years made many valuable and widely quoted studies on the rights of union members.[11] Largely repeating the substance of the 1943 report, the new report did not propose any specific legislation, preference still being given to "an effort to persuade unions to adopt an adequate program of self-control." In 1958 the ACLU stated its belief that this report had "helped shape present-day thinking"[12] leading up to the Senate passage of the Kennedy-Ives bill in that year.

After the first disclosures of improper union activities by the McClellan Committee and related investigations, the AFL-CIO Executive Council in 1956 and 1957 adopted several "codes of ethical practices," the sixth of which dealt with "union democratic practices."[13] Included in the "democratic rights" of union mem-

8. *Id.* at 66–84 *passim.*

9. *Hearings before the House Committee on Education and Labor on Bills to Amend and Repeal the National Labor Relations Act,* 80th Cong., 1st Sess., 3633–43 (1947).

10. A similar approach was taken by Representative Jacobs two years later in proposing H.R. 4914, 81st Cong., 1st Sess. (1949). See Aaron & Komaroff, *Statutory Regulation of Internal Union Affairs—II,* 44 ILL. L. REV. 631, 636–37 (1949).

11. See, *e.g.,* Summers, *The Usefulness of Law in Achieving Union Democracy,* 48 AM. ECON. REV. 44 (May 1958); Summers, *Disciplinary Powers of Unions,* 3 IND. & LAB. REL. REV. 483 (1950); Summers, *Disciplinary Procedures of Unions,* 4 IND. & LAB. REL. REV. 15 (1950); Summers, *The Right to Join a Union,* 47 COLUM. L. REV. 33 (1947); Summers, *Legal Limitations on Union Discipline,* 64 HARV. L. REV. 104 (1951).

12. AMERICAN CIVIL LIBERTIES UNION, A LABOR UNION "BILL OF RIGHTS"—DEMOCRACY IN LABOR UNIONS—THE KENNEDY-IVES BILL 3 (Sept. 1958).

13. These codes are set forth in full in 2 LEG. HIST. 1405–10, and summarized in LEVITAN, GOVERNMENT REGULATION OF INTERNAL UNION AFFAIRS AFFECTING THE RIGHTS OF MEMBERS 6–7 (1958).

bers which the Council stated should be zealously guaranteed by all AFL-CIO affiliates were the right to democratic participation in union affairs, the right to fair treatment in the application of union disciplinary regulations, and the right to criticize union policies and leaders without undermining the union as an institution. The "union democratic practices" code also included other rights —such as free elections—eventually covered by the Landrum-Griffin Act.

The ACLU adopted a new "Bill of Rights" on March 21, 1958,[14] to comport with its "new thinking" with regard to problems which had arisen after its 1952 report. Section I of that "Bill of Rights" specifically set forth the right of union members freely to speak, publish, and assemble. In terms of the Landrum-Griffin Act, section I of the ACLU's "Bill of Rights" bore a close resemblance to section 101(a)(2) of the act, although the ACLU provision was more detailed. Similarly, section VI of the ACLU's "Bill of Rights," relating to due process within the union, appears to have foreshadowed section 101(a)(5) of the act, although the ACLU provision was considerably more detailed than either section 101(a)(5) as finally enacted or the longer versions of that section which were originally proposed by Senator McClellan. Other sections of the ACLU's "Bill of Rights," dealing with equal treatment by the union and with the right of members to vote and participate in meetings, likewise presaged provisions finally enacted in section 101(a)(1) of the Act. The ACLU's "Bill of Rights" was presented and explained to the Senate Labor Committee at its Spring 1958 hearings[15] on bills (chiefly the Kennedy-Ives Bill) covering the bulk of the McClellan recommendations, one of which concerned democratic practices of unions.

It should be emphasized at this point that the ACLU proposals had hitherto contemplated very narrow legislative sanctions. At the 1958 Senate hearings, the ACLU spokesman limited his enforcement recommendation to review by an administrative agency, which would have acted as a public prosecutor only in extreme cases.[16] The possibility of providing for private suits in the federal courts by aggrieved members, as finally provided by Title I of the act, was almost totally—if not completely—ignored by all authorities up to this time.

14. See pamphlet cited in note 12 *supra.*

15. *Hearings before the Senate Subcommittee on Labor on Union Financial and Administrative Practices and Procedures,* 85th Cong., 1st Sess. (1958).

16. *Id.* at pp. 1115–33.

II. LEGISLATIVE HISTORY OF THE BILL OF RIGHTS

The McClellan Committee investigations provided the impetus for the enactment of Title I. Without these investigations it seems extremely doubtful that there would have been compelling pressure in Congress for any type of legislation relating to internal union affairs. In March of 1958 the Committee made five "interim" recommendations, one of which was for legislation to "insure union democracy."[17] This recommendation was primarily designed—as were many of the earlier nonlegislative proposals dealt with in previous paragraphs—to secure free and secret elections, as well as to limit the trusteeship practice with its attendant abuses.

To carry out the McClellan recommendations, Senator Kennedy introduced S. 3974, the Kennedy-Ives Bill, which was reported out by the Senate Committee on Labor and Public Welfare after extensive hearings on that bill and related bills.[18] The Kennedy-Ives Bill, however, did not deal with any of the major topics eventually embraced by Title I of the Landrum-Griffin Act, and Senator Goldwater called attention to this in his minority views.[19] Referring to the most recent ACLU report on the need for a union "Bill of Rights," he criticized the Kennedy-Ives Bill for failing to deal with such matters as freedom of speech and press, equal treatment of members, and union disciplinary proceedings. Senator Goldwater then stated his intention to offer substitute legislation to "establish a machinery which will enable the members of unions through their own initiative to take the necessary action to assure the rights and democratic procedures set forth" by the ACLU.

Senator Goldwater's chief bill[20] contained a separate title dealing with "democratic rights of union members and employees" (note the addition of "employees," *i.e.*, nonmembers), the enforcement of which was to be almost completely entrusted to the NLRB. The "democratic rights" dealt with in this bill were the recall of union officers, referenda on internal affairs (*i.e.*, proposals to repeal, amend, or otherwise change any provision in the union's constitution, by-laws, or other governing rules or regulations), voting in any such referendum or in any union election, and majority approval of a no-strike clause. Criminal penalties were provided for the willful restraint or coercion of any employee or member seeking to initiate or participate in any of the aforementioned procedures or activities. Like the Kennedy-Ives Bill, Senator Goldwater's bill made no mention of free speech, equal treatment, and

17. S. REP. No. 1417, 85th Cong., 2d Sess. (1958).
18. See *Hearings*, note 15 *supra*.
19. S. REP. No. 1684, 85th Cong., 2d Sess., pp. 52–53 (1958).
20. S. 3954, 85th Cong., 2d Sess. (1958).

the other "rights and democratic procedures" championed by the ACLU.

When the Kennedy-Ives Bill passed the Senate but failed to get past the House in 1958, the legislative wheels started rolling again in January, 1959, with a new—but similar—labor reform bill known as the Kennedy-Ervin Bill.[21] This is the bill which, after complex legislative maneuvers, eventually became the Labor-Management Reporting and Disclosure Act of 1959. Since the genesis of Title I thereof forms an important and absorbing chapter in the legislative history of the Act, and is essential to a full understanding of its particular provisions, a step-by-step account of the development of Title I is given below. Following this account, legislative history pertinent to each section of Title I will be given.

A. GENERAL HISTORY OF TITLE I

After subcommittee hearings on the Kennedy-Ervin Bill and related bills had been closed in early 1959,[22] Senator McClellan introduced a new and comprehensive bill which included a Title I entitled "Rights to be Guaranteed in Charters of Labor Organizations."[23] The first part of this title dealt with "basic rights" of union members and was, for all practical purposes, the forerunner of the finally enacted Bill of Rights, although the McClellan version was somewhat longer and more detailed than the final legislation. Because of Senator McClellan's "long experience in the field" and his "exceptional leadership" of the investigating committee, Senator Kennedy took the unusual step of reconvening the subcommittee hearings to receive Senator McClellan's explanation of his bill.

In his appearance before the subcommittee,[24] Senator McClellan stated his belief that every union seeking representation or complaint rights under the National Labor Relations Act, as well as tax exemption, should comply with basic minimum standards set by Congress. These proposed standards, it should be noted, were not limited to protection of the specified basic rights, but extended to other provisions of Title I of his bill which covered union elections, certain union funds, union meetings and conventions, and related matters dealt with in other titles of the final act. Also, it is noteworthy that the bill required union charters to contain these various guarantees, a sweeping provision that was finally wa-

21. S. 505, 86th Cong., 1st Sess. (1959).

22. *Hearings before the Subcommittee on Labor of the Committee on Labor and Public Welfare of the Senate on Labor-Management Reform Legislation*, 86th Cong., 1st Sess. (1959).

23. S. 1137, 86th Cong., 1st Sess. (1959), reprinted at 1 LEG. HIST. 260–324.

24. *Hearings, supra* note 22, at 647.

tered down to a provision merely making inconsistent charter provisions "of no force or effect."

Little attention has been given to the fact that on February 16, 1959, three days before Senator McClellan introduced his bill, Representative Barden introduced a substantially similar bill in the House.[25] There is no published information to indicate whether or not the two Congressmen co-operated on this matter. However, Senator McClellan gave a summary analysis of his bill to the Senate on February 19, whereas Representative Barden did not similarly deal with his own bill until February 24.[26]

On April 14, the Senate Labor Committee reported out S. 1555 as its version of the proposed labor reform bill,[27] but the "basic rights" section was not included and the committee majority report implicitly rejected such extensive guarantees of individual rights and intrusions into the internal affairs of unions. The minority, comprising only Senators Goldwater and Dirksen, protested that the bill did nothing to guarantee certain rights proposed by the ACLU—freedom of speech, press, and assembly; equal treatment of members; and due process in union disciplinary proceedings. The minority implied that it would press further for inclusion of such provisions, but subsequent events made this unnecessary.

During the Senate's consideration of S. 1555, Senator McClellan offered his "Bill of Rights" as an amendment thereto.[28] This amendment was substantially similar to Title I of his original bill. The chief objection to the amendment, as stated by Senator Kennedy, was that the protection of the rights covered by the amendment were better left to existing state laws, to the Taft-Hartley Act, and to S. 1555. Senator Kennedy also argued that the provision for enforcement by the Secretary of Labor was inconsistent with the elimination of the scheme for federal enforcement from the civil rights bill. Senator McClellan replied that the states would be ousted from jurisdiction by the principle of federal pre-emption. His amendment was twice approved by a one-vote margin on April 22.

Two days later the Kuchel "substitute" amendment, a so-called compromise prepared by a group of nine Senators,[29] was intro-

25. H.R. 4473, 86th Cong., 1st Sess. (1959); see 2 LEG. HIST. 1466.

26. 105 CONG. REC. 2407–17 (daily ed. Feb. 19, 1959) (remarks of Senator McClellan); 105 CONG. REC. 2574–76 (daily ed. Feb. 24, 1959) (remarks of Congressman Borden).

27. S. REP. No. 187, 86th Cong., 1st Sess. (1959); reprinted at 1 LEG. HIST. 397–515.

28. 105 CONG. REC. 5810 (daily ed. April 22, 1959) (remarks of Senator McClellan).

29. For the text of the Kuchel amendment and a list of its sponsors, see 2 LEG. HIST. 1220.

Professor Archibald Cox, who worked closely with Senators during the evolution of the labor reform bill, has stated that during the two-day prep-

duced and easily passed on April 25. Its main points of difference from the original McClellan proposals were:

(1) the substitution of private civil suits for those filed by the Secretary of Labor;

(2) the addition of language specifying the ways in which members have "equal rights" within the labor organization;

(3) the addition of qualifying language, making a member's participation privileges in union affairs subject to reasonable union rules and regulations, and of similar language as to the handling of union meetings and the member's rights of speech and assembly, thus presumably permitting the union to guard against anti-union activities within the union;

(4) transfer of the provisions relating to the right of candidates for office to inspect membership lists out of the "Bill of Rights" and into Title IV, dealing with elections; and

(5) the addition of a restriction on employer participation in civil suits, apparently intended to prevent union members from "fronting" for employers.

The "Bill of Rights" provided in the Senate-passed bill was evaluated and criticized by witnesses appearing before the House committee, which had been holding hearings on labor reform proposals for some time before the Senate passed its bill.[30] As a result, the bill reported out by the House committee on July 23[31] contained several important modifications of the Senate bill:

(1) The term "equal rights" was retitled "rights of [union] members," and these rights were further made "subject to reasonable qualifications uniformly imposed."

(2) The section on "freedom from arbitrary financial exactions" was renamed "Dues, Initiation Fees and Assessments," and the section was revised to eliminate regulation of decreases in dues and also to permit national and international unions or intermediate bodies to increase dues and other fees by majority vote of their executive or other governing boards, as well as by secret-ballot vote by members at conventions.

(3) The House bill eliminated from the "Protection of the

aration of this compromise, "Many groups had to be consulted and since the Senate had proceeded to other sections of the bill the work was done late at night or in little knots upon the Senate floor. The draftsmanship left much to be desired, perhaps because of the haste and stress, the number of participants, and the priority of tactical acceptability over nicety of expression." Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 MICH. L. REV. 819, 833 (1960).

30. *Hearings before the Joint Subcommittee on Labor-Management Reform Legislation of the House Committee on Education and Labor on H. R. 3540 and Related Bills*, 86th Cong., 1st Sess. (1959). Some of the chief objections made before this subcommittee are summarized in Hickey, *The Bill of Rights of Union Members*, 48 GEO. L. J. 226, 234–39 (1959).

31. H. REP. No. 741, 86th Cong., 1st Sess. (1959).

Right to Sue" section the six-month time limit imposed by the Senate bill on a union's right to require a member to exhaust "reasonable" internal union procedures before resorting to court action, but a similar limitation was written into section 102 (which provides for private suits to enforce all section 101 rights).

(4) The House bill provided that procedural safeguards, such as the requirement of a fair hearing on written charges, would come into play after a member was fined, suspended, or otherwise disciplined (rather than as prerequisites to such disciplinary action), thus preserving the union's right to act summarily against wrongdoing officers or members.

(5) The House bill eliminated the criminal sanctions provided by the Senate bill.

The House committee report[32] was almost completely devoid of any explanation or discussion of the basic provisions of the bill, aside from the statement that the provisions of Title I of the bill were "premised" on the McClellan Committee recommendation for legislation to insure union democracy.

After some debate—which throws almost no light on the legislative history of the Bill of Rights from the House point of view—the House substituted the Landrum-Griffin Bill for the House committee bill and passed it on August 14. With respect to the Bill of Rights, the Landrum-Griffin Bill was substantially the same as the original Senate bill, except that it:

(1) adopted the House committee's version of the section on dues, fees, and assessments;

(2) modified the Senate provision for a time limit on union-compelled exhaustion of internal union remedies prior to suit by an aggrieved member, by reducing this limit from six to four months—presumably to permit resort to the NLRB if necessary;

(3) provided for criminal sanctions, but placed them in the catch-all category of Title VI and limited their application to cases involving interference with members' rights by force and violence, or threats thereof;

(4) adopted the House committee's action in transferring to Title I the paragraph relating to the unions' obligation to furnish copies of bargaining contracts (and in adopting this action freed the unions from criminal sanctions, in favor of civil enforcement by the Secretary of Labor); and

(5) eliminated from the bill's definition of the term "member," or "member in good standing," a person who had merely "tendered" the lawful requirements for union membership, thereby preserving a union's authority to determine who should be admitted to membership.[33]

32. *Ibid.*

33. This, it may be observed, had the effect of harmonizing the new

The conference report bill adopted the House version of Title I *in toto*. This bill was enacted without change by the Senate on September 3, and by the House on September 4.

B. INDIVIDUAL HISTORIES OF SPECIFIC RIGHTS

With this general history of the Bill of Rights in mind, it is now appropriate to consider specific congressional discussion of each of the five subsections which comprise the Bill of Rights. Generally speaking, almost all of the pertinent discussion was on the floor of the Senate. The remarks of members of the House of Representatives, as well as the various committee reports, throw little if any light on the intended purpose or meaning of these sections.

1. Section 101(a)(1)—Equal Rights

Section 101(a)(1) guarantees all union members "equal rights and privileges" in the nomination and election of union officers and in the determination of union policies at membership meetings, "subject to reasonable rules and regulations in such organization's constitution and by-laws."

As originally introduced by Senator McClellan in his bill and repeated in his "amendment" (which passed by one vote), this section did not spell out in any detail the "equal rights and privileges" to be protected, except that they were to include "identical voting rights and equal protection of the union's rules and regulations"; there was no stated thought of preserving the union's right to make and enforce reasonable rules and regulations.[34] Senator McClellan very briefly explained his proposal on April 22 by referring to his committee's repeated disclosures of union denials of the right of union members to vote, work, and have a voice in union affairs—denials of "the basic human rights on which our very freedom was founded."[35] The Kuchel compromise amendment, offered three days later, was identical with the provision as finally enacted, including the union's right as to rules and regulations. Senator Kuchel made no explanation of the choice of rights and privileges set forth, but he did state that the McClellan provision was considered too broad, and that such equal rights as were not specified in the new paragraph were *not* being thereby taken

law with the "union rules" proviso in § 8(b)(1)(A) of the Taft-Hartley Act which provides that nothing therein shall "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." 61 Stat. 141 (1947), 29 U.S.C. § 158 (b)(1)(A) (1958).

34. Senator McClellan, however, stated much later that this bill implicitly protected a union's right to make and enforce such rules and regulations. 2 LEG. HIST. 1294. However, the bill did not so specify.

35. *Id.* at 1103.

away from members unless a federal court determined that it was reasonable for the union to curtail such rights.[36]

Several other Senators, including Senator Kennedy, stated for the legislative history that the enumeration of certain rights was not intended to have the effect of excluding other rights.[37] Their position appears to have been based upon section 103, which specifically preserved all other rights of union members "under any State or Federal law or before any court or other tribunal." However, Senator Holland pointed out that section 103—as then written—did not preserve rights under union charters or by-laws and regulations; this defect was later remedied by the addition of such rights to the language of section 103. Senator Aiken, another member of the "Kuchel group," observed that the reason for using more restricted "equal rights" language in the Kuchel version than had been used in the McClellan version was to permit unions to expel known Communists and criminals; but Senator McClellan, with Senator Kennedy's backing, argued that his bill would not have accommodated Communists. Little attention was given to the "reasonable rules" clause, and Senator Lausche pointed this out.

After the Kuchel version had been passed by the Senate, section 101(a)(1) was criticized by Senator Goldwater, on the ground that it was not sufficiently broad, and by Senator Morse, on the theory that it unduly projected the "Federal Government" (apparently referring to the courts) into matters already handled by state courts under existing law.[38]

The House committee, deleting the references to rights as "equal," reworded the subsection without material change in its meaning, but subjected the rights only to "reasonable qualifications uniformly imposed," a more general requirement. As with other subsections of the Bill of Rights, little consideration was given on the House floor to the intent or meaning of section 101(a)(1), and the House eventually substituted the Landrum-Griffin Bill for the committee version. The Landrum-Griffin Bill was, with respect to the "equal rights" provision, identical with the Senate-passed bill.

2. Section 101(a)(2)—Freedom of Speech and Assembly

Section 101(a)(2) provides that "every member . . . shall have the right to meet and assemble freely with other members . . . and to express at meetings of the labor organization his views upon candidates . . . or upon any business properly before the meeting." However, the subsection preserves the union's

36. *Id.* at 1231.
37. *Id.* at 1231–34 *passim.*
38. *Id.* at 1270, 1280 (Sen. Goldwater) & 1414 (Sen. Morse).

right "to adopt and enforce reasonable rules" relating to the membership's responsibility toward the organization as an institution and restraining members from conduct which would interfere with the union's performance of its legal or contractual obligations.

In its first legislative forms (the McClellan bill and amendment), section 101(a)(2) was broken down into two separate subsections dealing respectively with free speech and free assembly, both being more far-reaching than was the final version. Not only were the detailed provisions which preserved the union's right to reasonable rules absent in the McClellan versions, but also there was included a broad freedom of members from "penalty, discipline or interference of any kind." The freedom of speech and assembly provisions aroused considerable interest on the Senate floor only after the introduction of the Kuchel amendment, in which section 101(a)(2) emerged substantially as finally enacted. On Senator McClellan's motion, a semicolon was inserted for the express purpose of making clear that union members would have freedom of speech outside the union hall as well as inside.[39] Senator Lausche pointed out that the Kuchel substitute did not guarantee absolute free speech as did the original McClellan proposal, but his plea for an explanation of this change was not directly answered. In the same vein, Senator Goldwater expressed grave misgivings concerning the retention of the "reasonable rules" proviso, because it would preserve the union's right to limit members' rights merely by constitutional or rules provisions.[40] In rebuttal, Senator Kuchel stated for the legislative history that this was not the intention of his group. When Senator Goldwater proposed an amendment having the effect of removing the proviso, several Senators opposed his proposal and the matter was eventually resolved by deleting six words from the proviso.[41]

The House committee bill was the same as the Senate-passed Kuchel amendment except that it omitted the "reasonable rules" proviso—an omission unexplained by the committee. The proviso was restored by the Landrum-Griffin Bill and enacted as such. As with section 101(a)(1), there was no interpretive discussion of section 101(a)(2).

3. Section 101(a)(3)—Dues, Fees, Assessments

This section establishes exclusive and detailed procedures by which a union may levy assessments and increase its dues and ini-

39. *Id.* at 1234.
40. *Id.* at 1235–36.
41. As originally submitted, the proviso read: "Provided, that *the foregoing is limited so that* nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules . . . ." The six italicized words were deleted. *Id.* at 1239.

tiation fees. In general, majority-vote authorization by the union's appropriate electoral body is required, and separate procedures are provided for local unions and national (or international) unions.

The expression of legislative intent as to this section was almost nil, despite its length and its potential importance in the practical operation of union membership rules. Senator McClellan's first version was very brief (in direct contrast with the other subsections, which started out their legislative history by being long and general) and made no mention of intra-union procedures.[42] But the clue to the inclusion of section 101(a)(3) in the Bill of Rights may be found in its original title, "Freedom from Arbitrary Financial Exactions," which was retained until the subsection reached the House Labor Committee.

Senator McClellan's amended version was considerably expanded over his original one-sentence provision, and foreshadowed section 101(a)(3) as finally enacted. The amended provision did not, however, carefully distinguish between procedures applicable to local unions and those reserved for international unions; it prohibited *any change* in dues and fees—as well as the adoption of new ones—without the required procedures (whereas the final Act applies only to increases in existing dues and fees); and it contained a regulation of initiation fees (eventually dropped) which would have limited an individual's fee to 75 per cent of the prevailing weekly wage payable to employees in the same job category "in the vicinity of such bargaining unit." Senator McClellan explained that his amended provision was designed to prevent such union practices as "hiking up" the initiation fees for newly created jobs and then assigning those jobs to new members rather than old members, in order to obtain the larger fees.[43]

The Kuchel amendment retained and slightly rephrased the detailed procedures contained in the McClellan version, and eliminated the curb on initiation fees.[44] Senator Kuchel did not make

42. The provision read: "Rules relating to the rate of dues and initiation fees, or the levying of any special or general assessment, may be adopted or amended only after due notice and by general vote." 1 LEG. HIST. 269.

43. 2 LEG. HIST. 1104.

44. This action may have been prompted by Senator Kennedy's observation on the floor that freedom from exorbitant initiation fees was guaranteed by § 8(b)(5) of the Taft-Hartley Act, which makes it an unfair labor practice for a union to require, under a valid union-security contract, an initiation fee in an amount which the Board finds excessive or discriminatory under all the circumstances. 61 Stat. 142 (1947), 29 U.S.C. § 158 (b)(5) (1958). It should be noted, however, that there have been very few cases filed under § 8(b)(5) in the 13 years following its enactment (some 17 charges were filed in fiscal 1959); and in only three cases has the Board found an initiation fee excessive or discriminatory. Local 839, Motion Picture Screen Cartoonists, IATSE, 121 N.L.R.B. 1196 (1958); Local 153, UAW, 99 N.L.R.B. 1419 (1952); Ferro Stamping and Mfg. Co., 93 N. L.R.B. 1459 (1951).

any statement on this question and it was not discussed on the Senate floor.

The House committee further revised the section to its final form—including the adoption of its present title (eliminating reference to arbitrary exactions), the limitation of its application to increases in existing dues and fees, and the inclusion of separate procedures for locals and internationals—and it became law without discussion.

4. Section 101(a)(4)—Right to Sue

This section prohibits a union from limiting the right of any member to institute a court action or administrative proceeding, although the member may be required to exhaust "reasonable hearing procedures" within the union which do not exceed a four-month lapse of time. A proviso states that no interested employer shall directly or indirectly finance, encourage or participate in any member suit or action under this subsection except as a party thereto.

Both of Senator McClellan's versions of this clause were somewhat similar to the final one, except that they provided a three-month limitation on the exhaustion of internal procedures and did not contain the "interested employer" proviso. Senator Javits raised the question whether any time period was necessary, to which Senator McClellan replied that he did not care what period was specified, provided that it was a definite one and was not so long that a union could obstruct the rights of its members.[45]

At this point the possible interplay of section 10(b) of the Taft-Hartley Act, which requires the filing of a charge within six months of an alleged unfair labor practice, had not been raised.[46] The Kuchel amendment[47] provided a six-month period, but no explanation was offered and there was no discussion of this provision before its adoption by the Senate. That body was solely concerned with the discussion and adoption of the employer proviso, which was first included in the Kuchel amendment *without* the term "interested." Calling attention to this clause and expressing approval thereof, Senator Goldwater suggested an amendment which would have excluded from the proviso's application an employer having no dispute or other connection with the union concerned. After some discussion of the fact that the proviso was *not*

45. 2 LEG. HIST. 1106.

46. After Senate passage of the Kennedy-Ervin bill, Senator Goldwater pointed out that the six-month limit was sufficiently long to stymie resort to the NLRB. *Id.* at 1270 & 1280.

47. This amendment specifically gave a union officer (as well as a member) the right to sue, see 2 LEG. HIST. 1221, but the House bill and final law did not.

intended to embrace employers such as a bank from whom an employee seeks to borrow money for a suit against his union, Senator Kuchel stated that Senator Javits had suggested the inclusion of the term "interested." This met with everyone's satisfaction.[48]

The House committee modified section 101(a)(4) by deleting the six-month provision, but the same effect was apparently intended to be accomplished by the inclusion of a similar six-month clause in the civil enforcement provisions of section 102, which is applicable to all rights.[49] The committee also extended the scope of the employer proviso to prohibit any interference or attempts to interfere with a union's internal affairs.

The very first point discussed by Representative Landrum, in introducing the Landrum-Griffin Bill as a substitute for the committee bill, was the exhaustion of remedies. The committee bill would have required available remedies to be exhausted before a suit could be filed, provided that the process did not extend as long as six months; the Landrum-Griffin Bill would have allowed a member to seek immediate court redress after four months, in the words of Representative Landrum, "without the further delaying and dilatory route of exhausting union procedures," thereby providing "effective and timely relief."[50] Representative Griffin's analysis of the bill pointed out that the four-month substitute for the Senate provision was designed to preclude possible loss of the right to file a charge with the NLRB.[51] Opponents of a time limit spoke against it on the ground that common-law and union procedures, including appeals to national or international bodies at their conventions, should not be disturbed. Congressman McCormack declared that protection of access to the NLRB was not necessary because the doctrine of exhaustion of internal remedies was not applicable to NLRB proceedings.[52] The House eventually passed section 101(a)(4) in the form proposed by the Landrum-Griffin Bill.

Two statements made after the conference committee agreement

48. 2 LEG. HIST. 1236–39.

49. The House committee's version of section 102 read as follows:

> (a) Any person —(1) who is aggrieved by any violation of section 101; and (2) who has exhausted the reasonable remedies available under the constitution and bylaws of a labor organization . . . or has diligently pursued such available remedies without obtaining a final decision within six calendar months after their being invoked; may bring a civil action . . . .

H.R. 8342, 86th Cong., 1st Sess. § 102 (1959); 1 LEG. HIST. 700.

50. 2 LEG. HIST. 1518.

51. *Id.* at 1520, 1566–67.

52. *Id.* at 1667. The Board has intimated that the pendency of intra-union proceedings does not affect its duty to resolve issues under the act. See S.G. Adams Co., 115 N.L.R.B. 1012 (1956).

merit attention. Senator Kennedy, calling attention to the fact that the conferees had adopted the four-month period, stated:

> The basic intent and purpose of the provision was to insure the right of a union member to resort to the courts, administrative agencies, and legislatures without interference or frustration of that right by a labor organization. On the other hand, it was not, and is not, the purpose of the law to eliminate existing grievance procedures established by union constitutions for redress of alleged violation of their internal governing laws. Nor is it the intent or purpose of the provision to invalidate the considerable body of State and Federal court decisions of many years standing which require, or do not require, the exhaustion of internal remedies prior to court intervention depending upon the reasonableness of such requirements in terms of the facts and circumstances of a particular case. So long as the union member is not prevented by his union from resorting to the courts, the intent and purpose of the "right to sue" provision is fulfilled, and any requirements which the court may then impose in terms of pursuing reasonable remedies within the organization to redress violation of his union constitutional rights will not conflict with the statute. The doctrine of exhaustion of reasonable internal union remedies for violation of union laws is just as firmly established as the doctrine of exhausting reasonable administrative agency provisions prior to action by courts.
>
> The 4-month limitation in the House bill also relates to restrictions imposed by unions rather than the rules of judicial administration or the action of Government agencies. For example, the National Labor Relations Board is not prohibited from entertaining charges by a member against a labor organization even though 4 months has not elapsed.[53]

It is not clear from this statement whether the four-month period was decided upon to permit access to the NLRB. Representative Griffin told the House the next day[54] that the section 101 (a)(4) proviso was not intended to impose a new restriction on members but rather to place a maximum on the length of time required to exhaust internal remedies, and that no obligation was imposed to exhaust futile or unduly burdensome procedures. He also stated that the proviso was not intended to limit the right to file NLRB charges (or the right of the NLRB to entertain charges), even if the four-month period had not expired.

Representative Griffin also stated that the employer proviso was intended—

> [to insure that] interested employers do not take advantage of rights accorded union members by encouraging or financing harassing suits or proceedings brought by union members against their unions. The purpose of the proviso should be kept in mind and it should not be so narrowly construed as to impose unnecessary or unintended restrictions upon employers in their relationship with their employees. For example, the language does not prevent, and there is no intent to preclude, an employer from encouraging his employees to write or otherwise communicate with their Congressman or legislators concerning legislation.[55]

53. 2 LEG. HIST. 1432.
54. *Id.* at 1811.
55. *Ibid.*

5. Section 101(a)(5)—Disciplinary Action

This section prohibits a union from disciplining a member (except for nonpayment of dues) unless he is served with written specific charges, given a reasonable time to prepare his defense, and afforded a full and fair hearing.

Both of the McClellan proposals on safeguarding against improper disciplinary action were aimed at the same objective as the final law. However, they were considerably more detailed and provided more safeguards, such as more exhaustive internal procedures and the opportunity for independent final review by an outside tribunal. What Senator Kuchel called "cumbersome and unnecessary language" therein was pared down greatly by the corresponding provision of his substitute amendment which became section 101(a)(5). Senator Kuchel also stated that since civil remedies had been provided in addition to the criminal penalty originally in the McClellan bills, a court would be "able to determine whether the rights of the union member have been protected and whether he has had constitutionally reasonable notice and a reasonable hearing, and whether the matter has been reasonably disposed of."[56] Little discussion of this provision took place on either floor of Congress. The House committee provided that the safeguards would come into play only *after* disciplinary action had taken place, but this change was nullified by the Landrum-Griffin Bill and the final law. The conference report and chief conferees all made clear that section 101(a)(5) was *not* intended to apply to suspension of a union member's status as an *officer* of the union.[57]

C. HISTORY OF REMEDIAL SECTIONS

1. Section 102—Civil Enforcement

Section 102 contains the provision that any person whose Title I rights have been infringed by any violation of that title may bring a civil suit in a federal district court for appropriate relief.

The original McClellan Bill (S. 1137) provided for civil suits by the Secretary of Labor as well as by the aggrieved person. Severe criminal penalties contained in the enforcement section of this bill would also have applied to violations of the Bill of Rights. The McClellan amendment to S. 1555 (passed originally by the Senate) omitted any provision for private suits, and included criminal penalties as a specific sanction applicable to the Bill of Rights. It was the inclusion of enforcement provisions specifically appli-

56. *Id.* at 1232.
57. H.R. REP. No. 1147, 86th Cong., 1st Sess. 31 (1959); 2 LEG. HIST. 1433.

cable to enumerated rights that prompted Senator Kennedy to declare several times that the Bill of Rights was unnecessary, since union members' rights were more satisfactorily protected by other provisions of S. 1555, by state law, and by the Taft-Hartley Act. It should be noted that up to this point the McClellan proposals had contained no provision analogous to section 103 of the Act, which preserves other state and federal remedies; thus there was implicit in S. 1555, as then written, the question whether affirmative provisions to enforce the newly defined rights could be considered pre-emptive. Senator Kennedy said that if the Bill of Rights were enacted, the more exhaustive state remedies which already existed might be wiped out. He argued that where the federal law contained specific provisions for the safeguarding of certain rights, those matters would be pre-empted. Senator Kennedy contended that the matters covered by the body of S. 1555 (*e.g.*, union elections and trusteeships) should be pre-empted, but that those contained in the Bill of Rights—being less easily definable—should not be pre-empted.[58] The upshot of the long discussion of the pre-emption issue was that Senator McClellan offered a detailed amendment, accepted without objection, specifically safeguarding rights and remedies under any other federal or state law.[59]

The Kuchel substitute which was passed by the Senate eliminated the provision for suits by the Secretary of Labor and moved the criminal penalties back to the body of the omnibus bill, leaving only private suits as a specific remedy under Title I. This was hailed by some Senators as taking the federal bureaucracy out of the Bill of Rights.[60]

The House committee bill followed the Senate bill except that criminal penalties were deleted from the body of the bill. Its civil action provision, however, encompassed an exhaustion of internal remedies requirement applicable to *all* rights in Title I. The Landrum-Griffin version, which became the law, provided (in section 610) moderate criminal penalties for physical interference (by force or violence, or threat thereof) with any rights set forth in the entire bill, as well as the private suit remedy in section 102.

2. Sections 609 and 610—Criminal Enforcement

The legislative history of section 610,[61] which is applicable to violations of all titles of the act and which provides for penalties of one year's imprisonment and/or a $1,000 fine, highlights the variety of methods proposed for enforcing union members' rights

58. 2 LEG. HIST. 1108–19 *passim.*
59. *Id.* at 1114.
60. *Id.* at 1233 & 1238.
61. An index of page references to the legislative history of § 610 is contained in the published *Legislative History* cited in note 2 *supra.*

guaranteed by Title I and other titles. Neither the Kennedy-Ives Bill nor the Kennedy-Ervin Bill contained any provision for criminal penalties for violation of the rights of union members—nor did either bill provide for civil suits, other than by the Secretary of Labor. Senator McClellan's original bill contained a provision (section 413a) substantially similar to the final section 610, except that the earlier version would have permitted imprisonment for five years and/or a fine of $10,000. This criminal penalty was added to the Kennedy-Ervin Bill by the Senate committee—at the behest of the minority members, according to Senator Goldwater.[62] Apparently intended to protect the right of union members to nominate candidates for and vote in union elections,[63] this provision formed the basis for Senator McClellan's objection that the Kennedy-Ervin Bill (then lacking any Bill of Rights) only vaguely defined the rights which a union member was to be entitled to exercise under the act—rights the interference with which was to be punishable by criminal penalty.[64] The Senate-passed version of the bill retained the criminal provision and made it applicable to all titles of the bill. The House bill that was reported to the floor contained no blanket criminal sanctions but contained separate enforcement provisions in each title; the Landrum-Griffin substitute, which substantially followed the Senate version, was amended without objection on the floor to reduce the penalties to one year and/or $1,000[65] and was eventually approved by the conferees in this form.

Section 609 provides that it shall be unlawful for a union or its agent to fine, suspend, expel or otherwise discipline a member for exercising any right guaranteed under the Act, and that the private civil suit provisions of section 102 shall be applicable for enforcement purposes. Section 609[66] is of interest in our consideration of the Bill of Rights not only because of its specific adoption of the section 102 enforcement method, but also because it appears to complement section 101(a)(5), relating to safeguards against disciplinary action. In fact, section 609 may have been suggested by section 101(a)(5), which was fathered by Senator McClellan. As in the case of section 610—and for the same reasons—section 609 was incorporated into the Kennedy-Ervin Bill by the Senate committee, criticized by Senator McClellan, and passed by the Senate.[67] At that time, it did not contain the civil

62. 2 LEG. HIST. 1855.
63. See, *e.g.*, S. REP. No. 187, *supra* note 27, and 2 LEG. HIST. 1140.
64. 2 LEG. HIST. 1104–05.
65. *Id.* at 1685.
66. An index of page references to the legislative history of § 609 is contained in the published *Legislative History* cited in note 2 *supra*.
67. See legislative history to which reference is made in notes 64 & 65 *supra*.

suit remedy but was a companion subsection of the forerunner of section 610, to be enforced by criminal action. The Landrum-Griffin Bill adopted the Senate version and added a sentence providing for enforcement by suits filed by the Secretary of Labor.[68] The final provision for private suits was written into the bill, by amendment from the floor, at the behest of Southern Congressmen.[69]

CONCLUSION

In closing, it is interesting to note that during the first year of Title I, the flood of litigation in the federal courts that some opponents of the Bill of Rights feared has not materialized. Reported decisions have been rendered in only 20-odd cases, and the overwhelming majority of those cases were dismissed on the ground that Title I did not encompass the right alleged by the plaintiff-member or did not apply retroactively, or that the plaintiff had not exhausted available internal remedies.

68. See 2 LEG. HIST. 1522 & 1567.
69. *Id.* at 1662 & 1685.

APPENDIX A

SECTIONAL INDEX TO THE LEGISLATIVE HISTORY OF THE "BILL OF RIGHTS"

Section	Subject Matter	Page*
101 (a)	Bill of rights in general:	
	Senate Debate	1229(2), 1239(3), 1259(2–3), 1294(2–3)
	House Debate	1566(3), 1572(2–3) (civil rights), 1623(1–2), 1630(2), 1645(3), 1648(2)–51(1) (civil rights)
	Appendices	1750(2–3), 1751(1–2), 1770(1–2), 1779(3), 1781(3)–82(1)
101 (a)(1)	Equal rights:	
	Act	4
	Bills	176, 268, 518, 603, 628, 696, 875
	Senate Committee	466, 948–49
	House Committee	765, 787, 853–54
	Conference	935
	Senate Debate	1102(1), 1103(1), 1230(2), 1231(3)–32(1), 1232(3), 1234(3), 1270(2), 1280(2), 1294(3), 1414(2–3)

*The page references in this index are to the pagination in *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, cited in note 2 *supra*. The numbers in parenthesis, which follow most of the page references, indicate the appropriate column in the page cited.

**References to the broad remedies (civil and criminal) which were provided in the earlier bills as part of omnibus enforcement sections are omitted. References to pertinent debate thereon are included below, however.