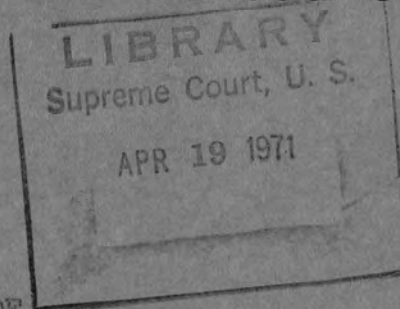


# Supreme Court of the United States



In the Matter of:

JAMES D. HODGSON, SECRETARY OF  
LABOR,

Docket No. 655

Petitioner

vs.

LOCAL UNION 6799, UNITED STEEL  
WORKERS OF AMERICA, AFL-CIO et al.

Respondents

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Date March 23, 1971

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 OCTOBER TERM, 1970

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4 JAMES D. HODGSON, SECRETARY OF :  
LABOR, :  
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Petitioner

vs.

No. 655

LOCAL UNION 6799, UNITED STEEL  
WORKERS OF AMERICA, AFL-CIO, ET. AL.,

Respondents

13 The above entitled matter came on for  
14 argument at 10:10 a.m.

15 BEFORE:

16 WARREN E. BURGER, Chief Justice  
17 HUGO L. BLACK, Associate Justice  
18 WILLIAM O. DOUGLAS, Associate Justice  
19 JOHN M. HARLAN, Associate Justice  
20 WILLIAM H. BRENNAN, JR., Associate Justice  
21 POTTER STEWART, Associate Justice  
22 BYRON R. WHITE, Associate Justice  
23 THURGOOD MARSHALL, Associate Justice  
24 HENRY BLACKMUN, Associate Justice  
25

C O N T E N T S

ARGUMENT OF:

PAGE:

LAWRENCE G. WALLACE, ESQ.  
On behalf of Petitioner

4

MICHAEL H. GOTTESMAN, ESQ.  
On behalf of Respondent

21

REBUTTAL ARGUMENT OF:

LAWRENCE G. WALLACE, ESQ.  
On behalf of Petitioner

45

1 APPEARANCES:

2 LAWRENCE G. WALLACE, ESQ.  
3 Office of the Solititor General  
4 Department of Justice  
5 Washington, D.C.

6 MICHAEL M. GOTTESMAN, ESQ.  
7 Washington, D.C.  
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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear argument in No. 655, Hadgson against Local Union No. 6799, United Steelworkers. Mr. Wallace, you may proceed whenever you're ready.

ARGUMENT OF LAWRENCE G. WALLACE, ESQ.

ON BEHALF OF PETITIONER

MR. LAWRENCE G. WALLACE: Thank you, Mr. Chief Justice, and may it please the Court.

This case is brought by the Secretary of Labor under Title 4, sometimes called the Union Democracy provisions of the Labor Management Reporting and Disclosure Act of 1959, it was brought to set aside the 1967 election of officers of the Respondent Local Union.

After the election, a member of the Local who had been an unsuccessful candidate for president protested the elections conduct to the Union and after relief was denied filed a complaint with the Secretary.

His internal protest with the Union had complained, among other things, of the use of Union facilities to prepare campaign literature for the incumbent president who was his opponent in the election.

His complaint with the Secretary repeated this charge, and added, for the first time, a charge that an unreasonably

1 restrictive meeting attendance requirement had been imposed  
2 as a condition for candidacy.

3 After investigating the election, the Secretary  
4 concluded that there was probable cause to believe that the  
5 Act had been violated with respect to each of these matters,  
6 and he advised the Respondent Unions of these findings and  
7 invited them to discuss the findings and to take internal  
8 remedial action.

9 When, after discussions, the Respondent Union  
10 refused to undertake remedial measures on either of these  
11 matters, the suit was filed.

12 Both the District Court and the Court of Appeals,  
13 upheld the Secretary's complaint with respect to the use of  
14 Union facilities to promote the candidacy of the incumbent  
15 president. The election for that office was accordingly ordered  
16 set aside on that ground, and that aspect of the judgement  
17 below is not at issue in this Court.

18 What is at issue are the rulings of the Courts  
19 with respect to the validity of the meeting attendance re-  
20 quirement. The District Court held that the Secretary did have  
21 authority or standing to raise that issue in this litigation,  
22 even though it had not been a subject of the member's complaint  
23 with the Union, but the District Court upheld the meeting  
24 attendance requirement on the merits, as authorized by the  
25 Act.

1           The Court of Appeals affirmed the judgement, but  
2 on the grounds that the Secretary did not have standing to  
3 raise this issue in this suit, did not reach the merits.

4           In our Petition for Certiorari, we ask this Court  
5 to decide the standing issue, and if it decides the standing  
6 issue in our favor, also to go on and reach the issue on the  
7 merits since it is an issue of national importance involved  
8 in litigation against several Locals of the Steelworker's  
9 Union, around the country, and the Respondents have joined  
10 in urging that both issues be reached, if the standing  
11 issue is indeed resolved in our favor

12           Now, if the Court please, I plan first to discuss  
13 the standing issue, and then in the course of discussing  
14 the second issue to summarize the facts that relate to the  
15 issue of the validity of the meeting attendance requirement.

16           The provisions of the statute relevant to the stand-  
17 ing issue can be found in the Appendix to our brief, on pages  
18 28 and 29 of the brief, Section 402 of the Act, and I wish  
19 first to direct the Courts attention to 402 (b), on page  
20 28.

21           And there the governing statutory language is that  
22 after a member of the organization has filed a complaint, the  
23 Secretary shall investigate such complaint, and if he finds  
24 probable cause to believe that a violation of this Title has  
25 occurred and has not been remedied, he shall, within a certain

1 time, bring a suit.

2 As we point out in our brief, this statutory language  
3 is consistent with our position that the Secretary has au-  
4 thority, supports our position that the Secretary has auth-  
5 ority to raise, in the lawsuit, any violation which his  
6 investigation discloses to have occurred in the election of  
7 cerning which the complaint had been filed, and we noted, also,  
8 that in the course of the legislative history, Congress had  
9 before it a draft of an alternative bill which would have lim-  
10 ited the lawsuit to the particular allegation made in the  
11 complaint, and while there is no explicit reason given in the  
12 course of the legislative history for the choice of this  
13 language rather than the alternative language, we think there  
14 is significance in the fact that this broader formulation was  
15 chosen by Congress.

16 Q Do I understand you correctly that if there  
17 is no complaint filed, the Secretary has no investigatory  
18 powers under Section 402 (b)?

19 A Well, he does have investigatory powers,  
20 but he wouldn't have powers to bring any lawsuit. He would  
21 have powers only to advise the Union if he believed that the  
22 Union's procedures were not in accordance with the Act.

23 But those powers are conferred under another Section  
24 of the Act, which is not reproduced in our Appendix, Section 601

25 Q then you're in a position to where the



1 presence of a complaint is your starting point. You have  
2 to have this.

3 A Under section 402, in order for the Sec-  
4 retary to have authority to bring this lawsuit, that is  
5 correct.

6 Q And having the complaint your argument  
7 is that you go off into points not raised in the complaint.

8 A Well---

9 Q Without having the complaint you can't  
10 do this at all.

11 A Well, the Secretary can investigate, in-  
12 form the Union, but cannot bring a lawsuit in the absence  
13 of a complaint, but that is our argument and I'll  
14 elaborate on the reasons for it in just a moment.

15 Q And --- the government---

16 A Well, without exhaustion by the Union,  
17 member, although in practice, the Secretary always gives  
18 the Union an opportunity to remedy the violations he has  
19 found internally.

20 Q --- specific provision for exhaustion,  
21 in there, doesn't it?

22 A It certainly does, Mr. Justice Harlan.  
23 This lawsuit never could have been brought by the Secretary  
24 if the complaint had been rectified internally by the Union  
25 to the satisfaction of the complaining member.

1 Q Well---

2 A We do not dispute that.

3 Q Well, the member can't go to the Sec-  
4 retary until after he, the member, has exhausted---

5 A That is correct. And presumably never  
6 would have gone to the Sectetary if the Union had redres-  
7 sed the specific violation of which he complained.

8 Q Well, independently before you, as I  
9 understand it, the Secretary, su responde, may make an in-  
10 vestigation as in Section 601?

11 A As in Section 601, yes, sir.

12 Q And then he does the same thing, vir-  
13 tually that a Union member is complaining of something. At  
14 least he did it --- with the Union officials---

15 A His aothority---

16 Q he will not ---

17 A That is correct. Except unlike the Union  
18 member he does not have ultimate redress to anyone who can  
19 then bring a lawsuit. If the negotiations are unsuccessful.

20 Now before we leave the face of the statute, we  
21 think there is another provision in Section 402 which has  
22 great bearing on this question, that is on page 29 of our  
23 brief, Subsection (c) (2).

24 And that indicates that if the Secretary's suit is  
25 suscessful, the Court shall set aside the election declare

1 the election if any, to be void, and then direct the conduct  
2 of a new election under the supervision of the Secretary.

3 And so far as lawful and --- in conformity with  
4 the Constitution and by-laws of the labor organization. Now  
5 this raises a considerable problem, if the scope of the law-  
6 suit brought by the Secretary is to be limited only to the  
7 complaint raised by the Union member.

8 Because the Secretary is charged if he is success-  
9 ful in that lawsuit, with supervising a new election in  
10 conformity with the Constitution and by-laws insofar as  
11 they are lawful.

12 And in this instance the Secretary was of the view  
13 that the meeting attendance requirement as a condition of  
14 candidacy was not lawful. His alternative, if he could not  
15 raise that issue in the litigation, would be either to super-  
16 vise the election applying what he believed to be a candidacy  
17 qualification violated the act, or to delay the election while  
18 this issue is separately litigated before the new election  
19 is conducted, which we think would be inconsistent with  
20 Congress' purpose to expedite the provision of relief under  
21 this statute.

22 Once the District Court has, in fact, found a  
23 violation, the statute provides that there can be no stay  
24 in the District Courts judgement setting aside the election  
25 and ordering a new one, while that judgement is appealed.

1 Q If he testified the election of the  
2 president --- conduct the election in accordance with the  
3 law, without setting aside the election results, even if  
4 he was right about being able to litigate the meeting atten-  
5 dance rule, in order to conduct the right kind of an election,  
6 does it necessarily follow that he might set aside the ele-  
7 ction of officers --- elected --- with which all the members  
8 seem to be satisfied?

9 A There is the possibility of this intermed-  
10 iate position, that only that particular election would  
11 then be conducted in conformity with the law, that is the  
12 Secretary views the law, and as the Courts presumably would  
13 uphold it, but this would have the disadvantage that admitted-  
14 ly the other officers would have been elected unlawfully,  
15 under that very decision, and yet their election would  
16 stand, which---

17 Q That may be true, but I understand it you  
18 say that the purpose of the statute was to --- in the sense  
19 that the Secretary can't intervene in an election in which  
20 all the members are satisfied with.

21 A That is correct, but---

22 Q ---the election of all the officers is ---  
23 purpose of the act --- Secretary ---

24 A Once his intervention is warranted under  
25 the Statute then it seems to us in a proper reading of the



1 legislative history and what this Court has said about the  
2 statute, that the scope of redress is not to be limited by  
3 what may have been the limited perception of the individual  
4 complaining as to what was wrong with the election or by  
5 his own self interest.

6 There is a broader public interest to be served by  
7 the Secretary's intervention once it's warranted, then as the  
8 Court put the matter in the Glass Bottle Blowers Case in  
9 39 US, although Congress was committed to minimal intervention,  
10 it was obviously equally committed to making that intervention  
11 once warranted effective in carrying out the basic aim of  
12 Title 4 which is to assure free and democratic union elections.

13 Perhaps the most significant thing about the legis-  
14 lative history of Title 4 is that Congress chose to invest  
15 the enforcement authority in the Secretary rather than the  
16 individual complainant.

17 One time a bill was passed through the House,  
18 which would have made the rights enforceable by private suit,  
19 but as finally enacted, the law recognized that there is a  
20 broader public interest to be served, and not merely the re-  
21 dress of individual grievances.

22 Q Mr. Wallace, there are other matters besides  
23 the election of officers that have been challenged, is that  
24 not so? The kind that you're applying, for example.

25 A Well, there are other matters that can be

1 challenged.

2 Q So I take it that your theory is that  
3 if a member of a Union makes a complaint about one particular  
4 type of expenditure which he considers unlawful and improper  
5 that once the inquiry is made by the Secretary, he can  
6 pursue every instance of improper expenditure that he en-  
7 counters.

8 A Well, we need not go that far, Mr. Chief  
9 Justice, that is perhaps a more difficult case. Here the  
10 challenge by the Secretary is limited to the 1967 election.  
11 All of these officers were elected in the same 1967 election,  
12 the validity of which is in question, and it has been question-  
13 ed by the Secretary on the ground that an unlawful meeting  
14 attendance requirement was imposed as a condition for  
15 the candidacy qualification, and this applied to all of the  
16 candidates elected in that election.

17 And Title 4 does not limit the investigation of  
18 theft or unlawful use of Union funds, there needn't be a  
19 complaint before the Secretary --- have jurisdiction, under  
20 the Act.

21 --- something about Union funds. So this really  
22 relates to the setting aside of elections and the holding  
23 of new, supervised elections.

24 Now there was a subsidiary purpose of fostering  
25 Union self government in the Act. We recognize that; it wasn't

1 the dominant purpose.

2 We recognize that if everyone is satisfied, the  
3 election cannot be disturbed, or if everyone can be made  
4 satisfied through internal procedures, the election cannot  
5 be disturbed.

6 But as we elaborate in our brief, we think it would  
7 be innappropriate to read broader implications than this,  
8 into the exhaustiinn requirement.

9 That is, the requirement that the member  
10 exhaust Union remedies. Because this is very different from  
11 the normal exhaustion of administrative remedy situation.

12 The Congress has not conferred, in fact finding, or  
13 any other kind of governmental authority on the Unions, on  
14 these private organizations.

15 Q Does a member have the right to present to  
16 the Secretary anything other than the issue that he has not  
17 exhausted within the Union?

18 A Well the Secretary will entertain com-  
19 plaints, but even if the complainant in this case had  
20 not raised the question of the candidacy qualifications, the  
21 Secretary would embrace that within his investigation, and  
22 this Court and others have indicated that his investigatory  
23 powers are broad, and if he concluded that there was a violation,  
24 he would include that in the allegations of the lawsuit.

25 Q The member filing the complaint with the

1 Secretary, if he has exhausted within the union the question  
2 of the president's election, and then he files with the  
3 Secretary, is he free to force the Secretary to investigate  
4 some issue he didn't exhaust on?

5 A Well, the Secretary views --- responsi-  
6 bility as investigating the entire validity of the election.  
7 So that the member isn't forcing the Secretary, whether he  
8 adds the additional one or not.

9 Q Well let's say the Secretary does, I'm  
10 not interested in anything except once you've exhausted  
11 everything in the Union. And --- authority that I've exhausted  
12 on one issue and---

13 A Well, the Secretary need not bring the  
14 suit.

15 Q Need not---

16 A Under Section 601, the Secretary can in-  
17 vestigate any matter at any complaint at any time, or without  
18 a complaint.

19 Q Yes. Well my question was whether the  
20 Secretary had any authority to say to these -- well is he  
21 supposed to investigate and respond to a complaint?

22 A Certainly.

23 Q Here's a Union member who has exhausted on  
24 one issue. --- Secretary say, I will not investigate the  
25 other five?



1           A           Well the Secretary can, but that has  
2 not been the practice.

3           Q           Because the member has the right to---

4           A           The member has to trigger  
5 the complaint.

6           Q           All 6 issues?

7           A           If the Secretary believes that they  
8 would not state probable cause to prove that the Act was  
9 violated then there is nothing that he need investigate with  
10 respect to some of the issues raised.

11           There is no point in investigating something which  
12 ont its face doesn't raise an issue---

13           Q           Well let's just take this case, Mr.  
14 Wallace. A member comes to him with a complaint about the  
15 president's election and the meeting rule. And he hasn't  
16 exhausted on the meeting rule within the Union.

17           A           That is correct.

18           Q           ---the Secretary say Well it sounds like  
19 a clear violation but I'm just not investigating that because  
20 you didn't exhaust it. May he do that?

21           A           Well, I suppose he may; he never has. That  
22 issue has never arisen. And it's hard for me to concieve that  
23 the SEcretary would do that. His responsibility is to try to  
24 redress violations, at least through conciliatory means.

25           Q           Mr. Wallace, suppose a complaint is filed

1 the presidents election was illegal becuse he wasn't quali-  
2 fied to run. And that was papers show in the complaint that  
3 that had been exhasted within the Union. But then they  
4 included 5 other complaints, about notice, improper voting,  
5 and everything else.

6 Could the Secretary go to Court that unless it  
7 had been exhausted within the Union?

8 A Yes, he could, Mr. Justice, under our  
9 view of the statute.

10 Now, you, I believe it should be kept in mind that  
11 the Secretary does invariably afford an aopportunity for the  
12 Union to remedy anything that he deems a violation before  
13 he sues, as he did here.

14 The Union has the same opportunity that it would  
15 have had, if the member had presented that specific complaint.  
16 Along with his other complaints. The same opportunity to  
17 redress it internally.

18 Q But the statute requires exhaustion on  
19 each one of those points, that you --- .

20 A No, the statute does not say exhaustion  
21 of each point. The statute says a member who has exhausted  
22 his remedy, his internal remedy, can file a complaint with  
23 the SEcretary and then the Secretary after his investigation  
24 finds probable cause to believe that a violation has occurred,  
25 may bring a lawsuit.

1 Q A violation.

2 A A violation. It doesn't say the violation  
3 alleged, or brought.

4 Q A violation plus 4 others.

5 A Any violation. Surely "a" means more than  
6 one if two violations were alleged initially.

7 Q Going back to my hypo. the secretary finds  
8 that the president was a valid candidate, and found no sub-  
9 stance in that complaint, but did find substance in the other  
10 4, that the Union member made no effort to exhaust on. What  
11 happens?

12 A The Secretary can bring a lawsuit because  
13 there has been dissatisfaction on the part of a member of the  
14 local with this election and the Secretary upon investigating  
15 it found that there was indeed reason to believe that the  
16 statute was violated. Maybe the dissaffected Union member did  
17 not conceive the accurate basis on which there was a violation  
18 in that case.

19 Q Well do you think that, the only thing  
20 that is required is to trigger it, with the filing of a  
21 complaint?

22 A That is the only thing required, now as a  
23 matter of policy the Secretary does not bring a lawsuit in a  
24 situation where the complaint itself was in his view completely  
25 without merit. But under our view of the statute he has the

1 authority to do this. As we point out in our brief, we think  
2 it would be inappropriate to read too much into this exhaus-  
3 tion requirement.

4 So long as internal rectification, opportunity for  
5 internal rectification is afforded to the Union.

6 Q What you're really saying is that the  
7 exhaustion provision in the context of this statute is a notice  
8 provision.

9 A Well that is correct. It's not a situation  
10 comparable to exhaustion in a governmental agency.

11 Q No.

12 A The --- it's completely de novo. It's  
13 not a suit to review the Union's determination. It's not a  
14 suit limited to the record that was made before the Union.

15 It's not a classical case of the exhaustion of admin--  
16 istrative remedies at all.

17 Q But the statute does--- exhaustion terms.

18 A Well, that is a familiar word; But given  
19 the entire purpose of the statute, the dominant purpose of  
20 Congress was to insure free and democratic elections, and there  
21 was a subsidiary purpose here which we believe the Secretary  
22 honors in his practices of permitting Union self government  
23 and not intervening if everyone in the local is satisfied  
24 with the result.

25 All of these purposes are served by the approach that



1 the Secretary takes. But the dominant purpose would be served  
2 by the view that the Secretary cannot assure the free and  
3 democratic election under the Statute, as the statute requires  
4 it, because of shortcomings in the initial complaint.

5 But in fact, the Secretary has given the Union  
6 the opportunity to rectify its shortcomings. It comes down  
7 to almost a technicality as to from whom the Union heard  
8 about the shortcomings.

9 In terms of the purposes of the Act---

10 Well, there is another issue in this case, and  
11 my time for discussing it is quite limited, but we believe it's  
12 a very important issue. And it's an issue under Section 401 of  
13 the Act, page 27 of our brief, whether this requirement as it  
14 was imposed, is a requirement authorized by the Act as a  
15 reasonable qualification uniformly imposed.

16 We believe that it wasn't under the approach taken  
17 by this Court in the Hotel Workers Case, 391 US, which elab-  
18 orated at some length the narrowness of this statutory excep-  
19 tion, and the fact that Congress took as its model democratic  
20 elections in which a requirement of this sort which disquali-  
21 fied the majority no matter how you look at it, of possible  
22 candidates, would be unthinkable in ordinary political ele-  
23 ctions.

24 This kind of a question is a campaign issue, rather  
25 than a basis for disqualification. And if I may, I'll save the

1 remainder of my time for rebuttal.

2 Q Thank you, Mr. Wallace. Mr. Gottesman?

3 ARGUMENT OF MICHAEL H. GOTTESMAN, ESQ.

4 ON BEHALF OF RESPONDENT

5 MR. GOTTESMAN: Mr. Chief Justice, and may it  
6 please the Court.

7 The principle thrust of Mr. Wallace's argument and  
8 it's also the governments argument in the brief is a concep-  
9 tion of this statute, which I think is inconsistent with what  
10 Congress was thinking about when it enacted it.

11 Over and over we hear that the broader public inter-  
12 est is the correction of all violations in Title 4. And this  
13 little subsidiary thing over here about exhaustion of remedies  
14 which somehow crept into the statute, and somehow the Secre-  
15 tary of Labor is stuck with it, and somehow it does  
16 indeed limit his power to proceed at certain distances, but  
17 because it's such a little subsidiary thing, then by all means  
18 it should be so narrowly construed that it limits in only where  
19 the Court has to say that it limits it.

20 Now I would suggest that if one examines the legis-  
21 lative history of this statute, that that doesn't accurately  
22 balance the two concerns that Congress had. To be sure, Con-  
23 gress was concerned with what it had found in the McClellan  
24 committee hearings. There were, if found, and it said, a min-  
25 ority in unions which have very undemocratic election procedures

1 the effect of which was that the incumbents were able to  
2 entrench themselves and the membership is not allowed to have  
3 a voice in selecting its governors.

4 And for that reason, Congress said, and it said it  
5 was doing it very reluctantly, it imposed what is undoubtedly  
6 the most elaborate set of procedures and provisions and re-  
7 quirements governing the elections of any non-public body  
8 in the United States.

9 The Congress realized in a sense, the enormity of what  
10 it was doing. It was making a quite unprecedented intrusion  
11 into the affairs of what had been thought to be private insti-  
12 tutions.

13 And so throughout the debates and throughout the  
14 Senate Report which is really the principal explanation of  
15 Title 4, is waiving the concern of Congress the union self-  
16 government not be invaded any more than is absolutely nec-  
17 essary, to accomplish these basic purposes for which the statute  
18 was being enacted.

19 Congress repeatedly said these are private insti-  
20 tutions, the overwhelming majority of them are honestly and  
21 democratically run, it made a finding based on its hearings  
22 that internal union appellate processees were in fact equipped  
23 to and had, in fact, dealt adequately with the sins that had  
24 been committed within unions, with only a few exceptions.

25 And in mind of the statute, which as it sought was

1 was going to balance, on the one hand its concern that where  
2 democracy was not existent that there would be a procedure  
3 to assure its existence, and on the other a more critical  
4 concern in this statute, that the government not go trampling  
5 into the affairs of unions any more than was absolutely nec-  
6 essary.

7 Now to that end it put into this statute exception  
8 402 (a), the exhaustion requirement. And perhaps I might  
9 begin, as Mr. Wallace did, with reading Section 402 (a).

10 It says a member of a labor organization who has  
11 exhausted the remedies available under the constitutiona and  
12 by-laws of such organization. Not who has exhausted some of  
13 the remedies. Not who has exhausted a remedy under one issue.  
14 But who has exhausted the remedies of all of them.

15 And we would suggest that if we are to resort to  
16 literalism, and we don't think we should, that that word  
17 "available" in there, suggests rather strongly that what Con-  
18 gress was saying is you must give the Union all of the oppor-  
19 tunities which it affords you. To bring these issues to it  
20 for correction in the first instance.

21 And when you have exhausted all of those remedies  
22 which are available within the Union, then you may go on to  
23 the Secretary of Labor.

24 And if it is found that the Union through the  
25 procedures it provides, has not adequately dealt with an

1 allegation of this statute, then in default of its correcting  
2 the problem, the Secretary of Labor may move in .

3 There was no default in this case. The --- its rule,  
4 which is the issue as to which we have this question was  
5 never raised within the Union.

6 And though there is talk about well, we can't ex-  
7 pect members to be able to draft complaints to the Union like  
8 lawyers would, we can't expect them to be articulate, that's  
9 not the issue in this case.

10 This isn't a case the failure to raise this issue  
11 is in artful draftsmanship, in a lack of understanding. This  
12 was a candidate for the president who had himself qualified  
13 under the meeting attendance rule.

14 He wasn't complaining about the meeting attendance  
15 rule, he was eligible. He was complaining because one of  
16 his opponents had run off a leaflet on the Union's mimeograph  
17 machine.

18 Q That's the impression I got from the  
19 brief. That there is no dispute that this complaining member  
20 was qualified under the rule?

21 A Absolutely not. He won, he was on the  
22 ballot, and he was defeated. And having been defeated, he  
23 challenged the election because his opponent, he challenged  
24 it within the Union, because his opponent had run off a leaf-  
25 let on the Union's mimeograph machine, and he had not been



1 told, though he knew it had happened, he had not been told  
2 that he had permission to do the same.

3 Now, he---

4 Q Is that the only issue?

5 A Well, there were other issues which  
6 the Secretary agrees that he raised within the Union, that  
7 the Secretary agrees were without merit. One of them related  
8 to the other issue which the Secretary raised in this law-  
9 suit, which was the meeting attendance rule. He complained  
10 about the placement of the voting booths, and some other  
11 things within the Union.

12 The Union found those complaints without merit and  
13 so did the Secretary. But for our relevant purposes he did  
14 raise within the Union, the complaint about his opponent using  
15 the mimeograph machine. And as the Secretary conceded in  
16 answer to an interrogatory, he did not raise within the Union  
17 any question as to the reasonableness of the meeting atten-  
18 dance rule. Under which he had in fact qualified.

19 Now the Union heard those issues which he did raise,  
20 and concluded that the election should not be set aside, for  
21 any of them. He then filed a complaint to the Secretary which  
22 the Secretary construes as having raised the reasonableness  
23 of the meeting attendance rule.

24 I think if you read it it's not that clear that  
25 it raised that, what he was really complaining about was

1 not the existence of the rule, but the fact that he claimed,  
2 and the Court ultimately found to the contrary, but he claimed  
3 that the rule had not been adequately communicated to the  
4 members so that they didn't know that they were obligated to  
5 attend the meetings in order to run.

6 Prior to the trial we had interviewed the complainant  
7 and asked him whether he had intended to raise the reasonable-  
8 ness of the rule with the Secretary, and he said, "No, it's  
9 ag great rule. I'm all for it." and at the trial we began to  
10 ask him questions as to whether he felt the rule was necessary  
11 for the well-being of the Union.

12 The government objected, and said we don't think  
13 the views of any one man are relevant to the resolution of  
14 this question. This is in the record. And therefore we don't  
15 think the Court should allow the complaining witness to  
16 state whether he is or is not in agreement with this rule.

17 And the judge sustained that objection. So the re-  
18 cord does not show the view of the complainant. I can only  
19 state that it was our expectation that had he been allowed  
20 to answer that question, he would have said that a man cannot  
21 be an adequate officer of this union unless he has attended  
22 the meetings.

23 It is doubtful to us that he even raised this question  
24 in his complaint to the Secretary, although the Secretary claims  
25 that he did.

1 But in any event raising it in the complaint to  
2 the Secretary is not sufficient compliance with the require-  
3 ments of the statute.

4 Because the statute quite clearly requires, as we  
5 read it, that a member have exhausted it within the Union.  
6 And I think this can be most easily demonstrated by examining  
7 the case which the Secretary admits. That is, that if a member  
8 does not exhaust any issue within the Union then the Secretary  
9 concedes, no matter how outrageous that election, no matter  
10 how outrageous the violations of Title 4, the Secretary may  
11 not institute a lawsuit to set that election aside.

12 He may indeed investigate and publish his condem-  
13 nation of it, but he may not institute a lawsuit to set it  
14 aside.

15 Q You do not view the Secretary's informal  
16 efforts at adjustment as a substitute for the statutory burden  
17 of the member to exhaust the remedies?

18 A No, we don't Your Honor, and I think when  
19 I explain what we understand to be the purpose of exhaustion,  
20 it will become clear why we don't view them as an adequate  
21 substitute.

22 But I might begin by saying that if I understand  
23 the Secretary's position, he doesn't view it as an adequate  
24 substitute, either. In those cases where no issue is exhausted  
25 before the end.

1           In other words, if there is no complaint within  
2 the Union, a member simply goes directly to the Secretary,  
3 if we understand the Secretary's position, he is not claiming  
4 that by giving the Union notice before he sues, that that is  
5 an adequate substitute for exhaustion.

6           In any event, let's look at that case. No matter  
7 how outrageous the violation, if we understand the Secretary,  
8 he cannot sue without some complaint within the Union.

9           But now, says the Secretary, if there is a complaint  
10 about something, no matter how irrelevant within the Union,  
11 if a member files a complaint saying I stubbed my toe on the  
12 way to the voting booth, and therefore this election may be  
13 set aside. Then, says the Secretary, all of these outrageous  
14 things that happened are now open to the correction of the  
15 Secretary.

16           Well that seems very salutary, it's certainly nice  
17 to have outrageous violations corrected. But could it concei-  
18 vably have been Congress' intention to adopt so Quixotic  
19 a statute.

20           Why would Congress say that no matter how outrageous  
21 the election, that unless a member exhausts within the Union  
22 the Secretary can't proceed? But if he exhausts about anything,  
23 no matter how irrelegant, that exhaustion opens the door for  
24 the Secretary to come through and then correct all of these  
25 things that are otherwise beyond his reach.

1 Just for a logical analysis it wouldn't make sense  
2 for Congress to make that kind of a distinction. And if one  
3 looks indeed at what Congress thought was going to be served  
4 by the exhaustion requirement, it becomes clear that not  
5 only is it illogical, but it's not what Congress intended.

6 Congress was, as I stated earlier, preoccupied with  
7 its concern to foster Union self-government. And as the Senate  
8 Report put it, "To keep the governments hands off Unions, to  
9 the maximum extent consistent with the requirements of this  
10 statute."

11 Q Mr. Gottesman, in this connection,  
12 help me along here. In 402 (b), it states, "The Secretary  
13 shall investigate and if he finds probable cause to believe  
14 that a violation of this Title has occurred,..." and so  
15 forth. Am I correct in my understanding that this statute  
16 formerly spoke of such violation?

17 A No, Your Honor.

18 Q Such allegation rather than violation?

19 Q No, Your Honor. I believe the governments  
20 brief rather got carried away on that point, if I may, I'll  
21 explain what happened.

22 This bill was enacted in 1959, and it was the Kennedy-  
23 Irwin Bill which led to Title 4. In 1958 there was a bill  
24 called the Kennedy-(Ives) bill, introduced and passed by the  
25 Senate, but not by the House. And that bill, as passed by the



1 Senate had exactly this language, which appears in the final  
2 statute. But because it was not passed by the House, it came  
3 up again in 1959 for reconsideration by the Senate.

4 In 1959, several other proposed bills were also  
5 introduced in the Senate, one of which was introduced by  
6 Senator Mundt, and that was Senate Bill No. 1002, and that  
7 is the one which the government refers to.

8 Senator Mundt's bill was completely different from  
9 this. It required no exhaustion of remedies within the Union  
10 at all. But it described some rules about how elections were  
11 to be conducted. And it said, if 2% of the members of the  
12 Union are dissatisfied, or think a violation has occurred, they  
13 may, by signing a petition, go to the Secretary of Labor,  
14 alleging that a violation has occurred.

15 And the Secretary may then bring a lawsuit challeng-  
16 ing such violation.

17 Now that is where that language came from that they  
18 cite as the competing --- before Congress. That bill, in fact,  
19 never saw the light of day. It is doubtful if anyone other  
20 than Senator Mundt ever read it. At least when the floor  
21 debates on the Kennedy-Irwin bill were going on, Senator  
22 Mundt said that his bill had been given short shrift in the  
23 committee and nobody had paid any attention to it, and he  
24 was very regretful about that.

25 But the fact is that that bill was never seriously

1 before the Senate for consideration. The language as it appears  
2 in its final form had been adopted a year prior to that in  
3 1958. It was simply carried forward again in 1959 and readopt-  
4 ed by the Senate without change in any of the salient points.

5 So that, I mean, it does use the words "a violation" but  
6 I don't think you can draw any inference that there is a  
7 conscious decision by Congress to use the words "a violation"  
8 rather than "such violation." Since, if Senator Mundt is to  
9 be believed, no one else even knew that his bill and  
10 his words "such violation" was before them for competing  
11 consideration.

12 Q Well why do you think they used the words "a vio-  
13 lation"?

14 A Well I think if you read the words "a violation" in  
15 context, they don't mean any violation. It says the Secretary  
16 shall investigate such complaint, and if he finds probable  
17 cause to believe that a violation has occurred. Now I think  
18 that that, fairly read, and particularly read in light of the  
19 purpose, means a violation alleged in the complaint.

20 Q You mean that as if instead of "a", it were "the  
21 complaint or violation"?

22 A Right. That is certainly a reading of it. If you  
23 had nothing but---

24 Q You're suggesting that that they should have is as  
25 if instead of "a" the words "the complaint".

1           A           That's correct, and we suggest that that  
2 reading is so consistent with the structure of these two  
3 readings,---

4           Q           But what if the member, having exhausted  
5 on one issue, may legally under the Act --- claim with the  
6 Secretary --- ? -

7           A           Well, again, that boils to whether he can  
8 do that, and to decide whether he can do that, you have to  
9 --- to 402 (a). So we say that if you read them together, what  
10 it says if he complains to the Secretary about that which  
11 he had exhausted within the Union, and the Secretary may ---  
12 with respect to being a violation, by which he complained.

13                   Which means ---

14          Q           --- if he files a complaint listing six  
15 issues when he's only exhausted on one, the Secretary really  
16 has no authority to investigate or to investigate and ---  
17 of any but one.

18          A           He may investigate, he may not file a law-  
19 suit on any but the one. He may not file a lawsuit on any  
20 issue, except---

21          Q           Although the members edition of the 5  
22 alledged violations brings about then, is the 601 investigation?

23          A           Correct. Now that result---

24          Q           Is it your suggestion that if that situation  
25 occurred, the Secretary would simply be able to say to the Union

1 member, now I find 5 other violations that you didn't complain  
2 about, and I can't do anything about them unless you exhaust  
3 your remedies within the Union. Isn't that about the course  
4 to be followed?

5 A Well, if there was still time, consistent  
6 with the Unions rules for the member to go back and exhaust  
7 undoubtedly he would be free to go back and exhaust and then  
8 bring it back to the Secretary.

9 Q Wouldn't your---

10 A Normally the timing is such that that  
11 wouldn't be a feasible alternative, because the time for  
12 exhausting within the Union would have expired under the  
13 Union's own rules.

14 Q Isn't your argument on this one sentence  
15 of Section (b) which uses "such complaint" in the first line,  
16 and "a violation" in the second line, rather at odds with  
17 most of the canons of the construction of the statute?

18 A I think not. I think the first and most  
19 basis canon of construction is to discern what Congress in-  
20 tended to do, which is discernable from the legislative  
21 history, which I do want to get to in---

22 Q Well, isn't the first job to see what  
23 Congress said?

24 A Well I think perhaps not so much with this  
25 statute as with ~~out~~ others. This Court has made very clear

1 in other cases dealing with this very section, that this is  
2 not a statute which can be read literally. That in view of  
3 the competing and contending forces that went into its con-  
4 struction and the changes that were made on the floor, etc.,  
5 etc., this is a statute that has to be approached with caution  
6 as to its construction.

7 Q You say it cannot be read literally?

8 A That's what this Court said, Your Honor.  
9 It said labor legislation generally, and this statute in  
10 particular cannot be read literally, but must be read in terms  
11 of the purposes which Congress sought to serve in its enact-  
12 ment. Which can be discerned from the legislative history.

13 Q What case was that?

14 A I believe it was the Laborer's case. There  
15 were two decided in the same day, Laborers and Glass Bottle  
16 Blowers. And in one of those, and perhaps in both, the Court  
17 made the statement that it cannot be read literally.

18 Q Well I think that's been said in other  
19 cases, particularly about labor legislation, hasn't it?

20 A Yes, indeed, Your Honor, but it's Glass  
21 Bottle Blowers. This portion is quoted at a page 32 of  
22 our brief.

23 Q You aren't worried about a literal reading?

24 A Well I'm not sure what alliteral reading  
25 leads to.



1                   Q               --- You can be as literal as the next  
2 fellow.

3                   A               Well you can literally read this to mean  
4 whatever you want it to mean. I think that's why this  
5 assumption about how wone construes labor legislation began,  
6 was that you can read things to reach whatever result you  
7 want. If you read the Senate Report, I think you get more  
8 guidance, and the ambiguities are somewhat resolved.

9                   As we read the Senate Report, the exhaustion re-  
10 quirement was intended to serve four functions.

11                  1) Congress didn't want the Secretary to be an agent  
12 at large, bringing lawsuits wherever he thought Unions weren't  
13 doing things right. --- As Mr. Wallace said. Congress wanted  
14 to allow the Secretary to act where the members were dis-  
15 satisfied with the way their Union was being run. And if the  
16 members are not dissatisfied with the meeting attendance rule,  
17 Congress didn't want the Secretary trampling in, challenging  
18 it absent their consent. Now that purpose can't be served  
19 at all if the SEcretary is free to alledge anything he wants  
20 to alledge, because as here, he can then alledge things to  
21 which there is no indication of membership dissatisfaction.

22                  The second thing Congress wanted to serve by this, it  
23 wanted to instill in the membership respect for Union tri-  
24 bunals and it wanted Union tribunals to function as administra-  
25 tive agencies notwithstanding the governments assertion to the

1       contrary.

2               This Court said that it was Congress' emphatic in-  
3       tention that unions would be the principle enforcement agen-  
4       cies of this statute. And so Congress wanted members to see  
5       that their tribunals would indeed be available to the resol-  
6       ution of these problems.

7               Now members are not --- encouraged to take their  
8       disputes to the Unions tribunals for solution. If they know  
9       that they can just throw any old thing into the Union and  
10      then go to the Secretary afterward, and he'll take it whether  
11      the Union had it or not.

12              And indeed, when the Unions are in fact behaving in  
13      a responsible fashion, as indeed the Steelworker's is, and  
14      the resolving election disputes, this union over a period of  
15      1964 through 1967 it provided corrective action in a majority  
16      of election complaints that came to it.

17              And so it is doing the job that Congress hoped and  
18      expected --- . But if the members say that the union trib-  
19      unals are just willfully overruled by the Secretary --- law-  
20      suits. They are not going to be convinced that this union  
21      is doing a job and they're going to lose their motivation  
22      to bring their problems to the union for correction.

23              Now to be sure, if the Union has fair notice of  
24      the problem and doesn't do anything about it, then it deserves  
25      the disrepute which its own internal proceedings have brought it.

1 But where as here, the Union has no notice what-  
2 soever that an issue is being challenged and the reason it  
3 has no notice is the reason that the issue is not being  
4 challenged by any of its members. It does nothing but bring  
5 the union's tribunal to disrepute. For the membership to see,  
6 but notwithstanding the Unions' action, the Secretary of  
7 Labor has then issued a lawsuit to set that election aside.

8 And finally, this statute was designed with very  
9 specific time limits in mind, and the hope that Union problems  
10 would be corrected very promptly.

11 And what the Secretary's construction means is, that  
12 particular kinds of election problems can be raised for the  
13 first time, many months, in this case it was 4 or 5 months  
14 after the election has been decided, and long after all the  
15 Unions internal correction procedures had been exhausted.

16 The Senate Report, said that it was putting the  
17 time limits into this statute because time is of the essence.  
18 That is their words. Time ceases to be of the essence when  
19 5 minutes later the Secretary as a result of his own views  
20 of what's good and what's bad in unions can raise for the  
21 first time issues which were never raised in the Union.

22 Q What do you say about the Secretary's  
23 right to have the membership attendance rule passed on in this  
24 case when, if he sues just for the ---

25 A For the president.

1 Q What about---

2 A We're ambivalent about that. There's --  
3 most of the purposes for which the exhaustion rule was de-  
4 signed would not be violated by allowing the Secretary to  
5 get what amounted to a declaratory judgement in the election  
6 which has been set aside for another reason. This thing will  
7 be done the way the Secretary claims it must be done under  
8 the statute.

9 Q Isn't that essentially for him to carry  
10 out his---

11 A Well, it is, except for one--

12 Q --- to the Act.

13 A It's not really essential to, and I'll  
14 explain why. There is one purpose of exhaustion which would  
15 not be served by that, and that's the purpose that unless the  
16 membership's unhappy, things are not to be changed. Which I  
17 stated was the first of the purposes. And it's the only  
18 one, incidentally which the Secretary acknowledges.

19 Q --- have to be about one thing.

20 A Yes.

21 Q --- a new election---

22 A Right.

23 Q ---in order to satisfy the membership you're  
24 going to have to carry out an election, and the Act says that  
25 if you carry out an election you carry out one that's inappro-

1 priate to the law.

2 A That's right. But the Act also says that  
3 unless somebody is unhappy with that election that you're  
4 going to carry out that it's not subject to challenge.

5 So you get the following dual problem: on the one  
6 hand, if all the members are delighted with the meeting  
7 attendance rule, take the extreme case, everyone of the million  
8 and a quarter steelworkers sign a thing saying I think this  
9 is a great rule, Congress quite clearly didn't want the  
10 Secretary to be able to get that rule set aside.

11 Even though it might be technically a violation.

12 Q I don't know how you can say that, because  
13 if Congress said you find the violation --- carry out an  
14 election --- you must carry it out in accordance with the  
15 law.

16 A Well---

17 Q I don't see how you say Congress didn't  
18 intend for them to raise the question of the meeting attendance  
19 rule.

20 A Well if this Court concludes that irrespec-  
21 tive of membership satisfaction that a new election must be  
22 conducted in accordance with Title, with every requirement  
23 of Title 4 even though the members might prefer it another  
24 way, then we would have no rproblem with the Court saying  
25 that the adjudication of themerits of this issue can be made,



1 not for the purpose of setting aside anything because of that  
2 adjudication, but for the purpose of obstructing the Union  
3 and the Secretary as to how a re-run, ordered for other  
4 reasons is to be conducted.

5 And indeed we told that to the Court of Appeals,  
6 I recall that we won this case in the District Court on the  
7 merits. The District Court said the meeting attendance rule  
8 is reasonable. In the Court of Appeals, the government, for  
9 the first time made the argument well, even if we're not al-  
10 lowed to challenge the election on this ground we ought to  
11 be entitled to guidance if we're to re-run the election for  
12 the president for other reasons we ought to have guidance as  
13 to how to do so.

14 And we indicated that we had no serious objection  
15 with the Court deciding the issue for that limited purpose.  
16 Not for the purpose of setting aside the election of all 11  
17 officers, which is what the Secretary seeks, initially, but'  
18 for the purpose of instructing the parties simply on  
19 how the re-run is to be conducted.

20 Q My understanding of your statement was, I  
21 want to make sure I get it right, that even as regards the  
22 Secretary, this man, who had qualified under the Union rule,  
23 had made no complaint to the Secretary, putting aside exhaustion  
24 about the rule,---

25 A Well, there's not---

1 Q Is that an overstatement or am I mis-  
2 understanding it, or what?

3 A Well, there is a disagreement between the  
4 Secretary and us as to what he complained about to the Sec-  
5 retary. His words were ambiguous.

6 Q Well what did he complain about?

7 A He said the Union conducted the election  
8 under a rule which was unfair. The meeting attendance rule  
9 which was unfair. I'm characterizing it. Because it was not  
10 adequately communicated to the members.

11 Now the Secretary said he was complaining about both  
12 the unfairness of the rule as such and the failure to commun-  
13 icate. We say, no, he was only complaining about the failure  
14 to communicate the rule. And we were prepared to have him  
15 testify and expected fully that he would testify. But he  
16 was only ---

17 Q --- irrelevant under your position on the  
18 Act.

19 A Oh , yes, it's irrelevant under ours---

20 Q He could have expressly attacked the rule  
21 and you would still be here.

22 A Absolutely.

23 Q In the same ---

24 A It's irrelevant under ours but there is  
25 at least a possible middle ground of saying that he can sue  
by the Secretary can sue --- what is raised in the complaint.

1           The Secretary has sort of alluded to that middle  
2 ground and I want to emphasize that even if there were such  
3 a middle ground, which we don't agree, we say that exhausted  
4 in the union, even if there were such a middle ground this  
5 record would not justify them to allow to sue on that.

6           Now I'd like to turn in my remaining few moments  
7 to the meeting attendance rule and its reasonableness as such.

8           The Secretary repeatedly talks about this is just  
9 like hotel employees, this is a case where a rule has disquali-  
10 fied, has rendered a majority of the members of a union in-  
11 eligible to run for office. And the single thing I would  
12 most like to emphasize is that this rule disqualified nobody.

13           Every single member of this union, and the Secretary  
14 conceded could qualify under this rule, and qualify without  
15 difficulty. All he had to do was attend 11 meetings over the  
16 course of a 21 month period.

17           The Secretary of Labor had a regulation published,  
18 it is still published today, expressly stating that a meeting  
19 attendance requirement, requiring 50% attendance at the meetings  
20 over a 2 year period, is a reasonable rule. Unless there is  
21 difficulty in attendance.

22           We are ironically here defending --- the Secretary's  
23 published regulatinn. He ironically is here attacking it. And  
24 the basis of his attack is that well it's true that's what  
25 my regulation says, but from time to time I change my mind, and

1 indeed, as the record in this case shows he changed it often.

2 On the question whether an otherwise reasonable  
3 rule should be set aside, because in fact only a very small  
4 percentage of the members choose to qualify themselves under  
5 it, by attending the meetings.

6 Six months before this election was held, the  
7 Secretary stated that he had conducted a review and had deter-  
8 mined that the small percentage should not invalidate the rule.  
9 Precisely because anybody could attend who wanted to and if  
10 they chose not to, that's their own choice.

11 After we held our election he changed his mind agains  
12 and decided to sue us. So we got caught betwixt and between.  
13 What we did was lawful when done, but unlawful when the Sec-  
14 retary changed his mind.

15 Q Mr. Gottesman, if we reach the merits,  
16 should this Court pass on them or should we remand?

17 A We strongly urge you to pass on them. And  
18 the reason we urge it is that the Secretary has now brought  
19 lawsuits against 15 steelworker local unions, challenging  
20 this identical meeting attendance rule, they're in just  
21 about every circuit in the United States. And we will be invol-  
22 ved in endless litigation over this issue, which will undoubtedly  
23 ly result in a conflict and will undoubtedly get back here,  
24 anyway.

25 And since the issue is before the Court at this time,

1 if you conclude that the issue was properly raised and there-  
2 fore before you, we strongly urge that you reach it and de-  
3 cide it.

4 Q Does Mr. Wallace join you in this?

5 A Yes, he does. I think he does. He does.

6 One thing I'd like to say about percentages because that's  
7 really the only argument that the Secretary's got here. Only  
8 a small percentage in fact chose to qualify. The fact is that  
9 of the 27 people who sought to run for office, 23 qualified.  
10 And that proves a rather salient fact which is, there's  
11 only a small percentage of people in any institution who want  
12 to run for office, and of those who do, given reasonable re-  
13 quirements for qualifying, the vast majority will, in fact,  
14 qualify.

15 Q What's the other union that has the  
16 3 year ---?

17 A I honestly don't recall. There is one  
18 other with a 3 year rule, but this election is only a 21 month  
19 rule, because it was in the local union. So the Court need not  
20 in this case determine the reasonableness of the 3 year rule,  
21 but only a 21 month rule. Thank you.

22 Q Thank you, Mr. Gottesman. Mr. Wallace, you  
23 have about 3 minutes left.



1 REBUTTAL ARGUMENT OF LAWRENCE G. WALLACE, ESQ.

2 ON BEHALF OF PETITIONER

3 MR. WALLACE: thank you, Mr. Chief Justice.

4 The Respondent's reading of the statute seems to  
5 us perhaps to be an appropriate one, if the House version  
6 had been enacted, giving the complainant the right to sue,  
7 but we believe the most crucial decision in the legislative  
8 history was when Congress decided to bring the Secretary into  
9 the picture under the Respondent's reading of this, the only  
10 possible effect of bringing the Secretary into the picture  
11 is that he may decide not to sue about something the  
12 complainant would have sued about.

13 He cannot expand the scope of the lawsuit, it seems  
14 to us that Congress brought the Secretary into the pic-  
15 ture for exactly the opposite reason to expand the scope of  
16 the inquiry beyond the limited self interest of the complainant  
17 to look at the broader public purposes that are involved in  
18 this statute.

19 In order to assure free and democratic elections  
20 for everyone, now even looked at narrowly it's true that this  
21 complainant, as Mr. Justice Harlan pointed out, qualified  
22 himself but it was a close election for president and the  
23 result might well have been different if someone else had  
24 been able to run in addition it might have taken away more votes  
25 from his opponent than from himself as happens in national

1 elections.

2 Q Well the thing that puzzles me is here  
3 is a man that's qualified under the rule that you're attacking.  
4 It is difficult for me to understand why he'd be complaining  
5 about a rule himself to the Secretary.

6 A Well, the District Court's reading of  
7 his complaint on page 44 of the record said that this is what  
8 he complained about to the Secretary, we think that was an  
9 accurate reading, but it may have been because he felt that  
10 with more candidates in the field he would have done better,  
11 there are people who are hoping that one of the governors will  
12 run for President on a third party ticket this year because  
13 they will benefit from it.

14 But self interest is not what Congress wanted to  
15 promote under this statute, and indeed, in a very real sense,  
16 since the Secretary's policy is to sue only if in his view the  
17 member;s complaint to the union had validity. In a very real  
18 sense what we are asking for here is to enable the Secretary  
19 to consolidate the lawsuits that otherwise would have to be  
20 separately brought, first to determine whether the lelection  
21 would be set aside and then to determine under what rules  
22 the new election would be held which would, it seems to us,  
23 intolerably delay the prompt remedy that Congress wanted to  
24 provide.

25 Q ---anybody since the other cases were de-

1 cided, this issue is expressly left over --- wasn't it?

2 A That is correct.

3 Q Was any effort made to get Congress to  
4 do anything about it?

5 A Not to my knowledge.

6 Q I notice that this was a rather --- ques-  
7 tion.

8 A ---that the issue is open, that is correct,  
9 but Congress has not acted and there has not been an effort.

10 There have been attempts to clarify the issue,  
11 in the Courts.

12 Now I do want to point out before I sit down since  
13 a reference has been made to the Secretary's interpretive  
14 manual, which is on page 203 of the Appendix, that it does  
15 say that 12 of the attendance requirement 12 of 24 may be  
16 reasonable. This is not a regulation; it was not published  
17 in the Federal Register, it was prepared for internal purposes  
18 as a guide to field workers in the Department and was made  
19 public only by virtue of the Freedom of Information Act.

20 It was not designed to be a definitive interpre-  
21 tation of the statute, and certainly the Respondents have not  
22 relied on that provision because neither in that provision nor  
23 in anything else has the Secretary ever said that a 3 year  
24 requirement may be reasonable.

25 And it's a 3 year requirement that's involved here,

1 and it is necessarily implicated in the case on the re-run of  
2 the election.

3 Even though the violation alleged was a violation  
4 of --- application to 21 months, the 3 year requirement is  
5 what is to be applied on the re-run.

6 I believe my time is expired.

7 Q Thank you Mr. Gottseman, thank you Mr.  
8 Wallace, the case is submitted.

9  
10 (Whereupon at 11:12 am, argument in the  
11 above entitled matter was concluded.)  
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