No. 00-129

In the Supreme Court of the United States

LOCAL 1011, UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC, PETITIONER

v.

ALEXIS HERMAN, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a rule restricting candidacy for union office to union members who have attended eight monthly meetings during the two-year period preceding nominations (or have been excused from attendance) is a reasonable qualification for candidacy under Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 481(e).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 207 F.3d 924. The opinion of the district court (Pet. App. 9a-35a) is reported at 59 F. Supp. 2d 770.

JURISDICTION

The judgment of the court of appeals was entered on March 23, 2000. On June 12, 2000, Justice Stevens extended the time within which to file a petition for a writ of certiorari to and including July 21, 2000, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), 29 U.S.C. 481 *et seq.*, prescribes requirements governing the election of officers of labor organizations. Every local labor organization covered by the Act is required to conduct, at least once every three years, an election of its officers by secret ballot among its members in good standing. 29 U.S.C. 481(b). Section 401(e) of the Act further provides that:

> a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed).

29 U.S.C. 481(e).[1]

2. Petitioner Local 1011, United Steelworkers of America, is a labor organization covered by the LMRDA. Pet. App. 10a. Chartered by and subordinate to the United Steelworkers of America, AFL-CIO (the International), petitioner is subject to the International's constitution, which provides that, in order to be eligible for election as a local officer, a member shall have attended at least one-third of the regular meetings of the local during the 24-month period preceding the election. *Id.* at 10a-11a. Because meetings are held on a monthly basis, the rule requires members to have attended eight of 24 meetings during that period. A member's absence from a meeting may be excused if it is due to his or her union activities, working hours,

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[1] Section 504 of the Act, 29 U.S.C. 504, which disqualifies from union office persons convicted of certain offenses, is not at issue in this case.

service in the armed forces, confining sickness, or jury duty. *Ibid.* If a member has one or more excused absences, however, the member must have attended one-third of the meetings from which he or she was not excused. *Id.* at 4a, 10a-11a.

In April 1997, petitioner conducted an election governed by the constitution's meeting-attendance rule. Pet. App. 10a. At the time of the election, petitioner had 2990 members in good standing. *Id.* at 11a. Only 95 members (3.1%) had attended eight or more of the 24 monthly meetings in the two-year period preceding the election. *Ibid.* Even after consideration of the rule's excuse provision, only 242 members (8%) were eligible for nomination. *Ibid.*

After unsuccessfully protesting the election to petitioner and the International, two union members filed complaints with respondent Secretary of Labor in which they alleged that the meeting-attendance rule was not a reasonable candidacy qualification under Section 401(e) of the LMRDA. Pet. App. 11a-12a; see 29 U.S.C. 482(a). The Secretary found probable cause to believe that petitioner had violated the Act by maintaining the meeting-attendance rule. Pet. App. 12a.

3. The Secretary then brought this action against petitioner under Section 402(b) of the LMRDA, 29 U.S.C. 482(b), to set aside the election on the ground that petitioner had imposed an unreasonable qualification for candidacy—the meeting-attendance rule—and that that violation of Section 401(e) may have affected the outcome of the election. See 29 U.S.C. 482(c). The district court granted summary judgment in favor of the Secretary. Pet. App. 9a-35a.

Relying on *Local 3489, United Steelworkers* v. *Usery* (*Steelworkers*), 429 U.S. 305 (1977), in which this Court invalidated the International's previous rule requiring

attendance at one-half of the monthly meetings over three years, the district court held that the reasonableness of the meeting-attendance requirement should be evaluated under a multi-factor test.[2] The district court therefore considered the percentage of union members whose candidacy was excluded by the rule (92%), how far in advance of nominations a candidate would be required to begin attending meetings in order to qualify (eight months), and petitioner's justifications for the rule. Pet. App. 16a, 25a-28a. The court concluded that, despite its excuse provisions, the rule imposed a substantial burden on the democratic process by requiring prospective candidates to begin attending meetings eight months in advance of nominations. The court held that petitioner's interests in encouraging attendance at its meetings and having candidates with demonstrated commitment and knowledge about union affairs did not justify the rule's anti-democratic effect, because the rule had not encouraged attendance, and the electorate could itself judge the commitment and knowledge of the candidates. *Id.* at 32a-33a.

4. The court of appeals affirmed. Pet. App. 1a-8a. The court agreed with the district court that the percentage of union members disqualified by the rule was not dispositive of its reasonableness, and that a footnote in the Secretary's interpretive regulations, 29 C.F.R. 452.38(a) n.25, that suggested a per se test based on that percentage was entitled to little weight. Pet. App.

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[2] The district court declined to accord deference to the Secretary's position that the high exclusion rate was determinative because her interpretation was not based on application of her expertise but rather on acquiescence in the decision in *Doyle* v. *Brock*, 821 F.2d 778 (D.C. Cir. 1987), which the court believed misinterpreted *Steelworkers*. Pet. App. 22a, 26a.

5a-6a (relying in part on *Herman* v. *Springfield Mass. Area, Local 497, American Postal Workers Union* (*Postal Workers*), 201 F.3d 1, 4 (1st Cir. 2000) (rejecting per se test based on percentage of membership disqualified because that percentage may reflect member apathy as well as burden imposed by meeting-attendance rule)).

Citing *Steelworkers* and subsequent decisions of the courts of appeals (including those on which petitioner relies), the court articulated a standard for evaluating meeting-attendance requirements that it believed was "consistent with the case law." Pet. App. 6a. Under that approach, a condition of eligibility that disqualifies the vast bulk of the union's membership from standing for union office is presumed unreasonable. *Ibid.* The union must "then present convincing reasons, not merely conjectures, why the condition is either not burdensome or though burdensome is supported by compelling need." *Ibid.* The court concluded that this approach appropriately distinguishes, as did the First Circuit in *Postal Workers*, between a rule's impact (which may merely reflect members' apathy) and its burden. *Ibid.*

Applying that standard, the court concluded that the petitioner had not established a lack of burden:

> Requiring attendance at eight meetings in two years imposes a burden because it compels the prospective candidate not only to sacrifice what may be scarce free time to sit through eight meetings, but also, if he is disinclined to attend meetings for

> any reason other than to be able to run for union office, to make up his mind whether to run many months before the election.

Pet. App. 7a. The court further concluded that petitioner had not satisfied the "onus of justification" that the rule was supported by compelling need. *Ibid.* The court held that the slight turnout at meetings demonstrates that the rule had not been successful in bolstering attendance by persons who might want to run for union office in opposition to incumbents. *Ibid.* Furthermore, the court noted that the union had apparently given no consideration to other inducements to attend meetings, and that petitioner had made no argument that a three-meeting rule, like that approved in *Postal Workers*, which would provide a longer window of opportunity to decide on candidacy, would fail to satisfy the union's desire to have experienced and committed officers. *Id.* at 7a-8a.

ARGUMENT

The decision of the court of appeals correctly concludes that petitioner's meeting-attendance rule is not a reasonable qualification for candidacy for union office under Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 481(e). The decision does not conflict with any decision of this Court or any other court of appeals. To the extent there is tension among the courts of appeals regarding the appropriate analysis for determining the reasonableness of meeting-attendance rules, this case is not a suitable one in which to resolve the tension. This Court's review is therefore not warranted.

1. Section 401(e) of the LMRDA guarantees union members in good standing the right to be candidates for union office, subject only to "reasonable qualifications

uniformly imposed." 29 U.S.C. 481(e). Petitioner contends (Pet. 17-18) that the court of appeals adopted an "entirely novel" and unsupported approach in determining whether petitioner's meeting-attendance requirement is a reasonable qualification under Section 401(e). Contrary to that contention, the approach of the court of appeals is supported by this Court's seminal decision on the issue, *Local 3489, United Steelworkers* v. *Usery* (*Steelworkers*), 429 U.S. 305, 310 (1977), in which the Court held that a prior version of the meeting-attendance rule, which required that candidates have attended at least one-half of the union's regular monthly meetings during the three years before the election, was not a reasonable qualification.

Consistent with the LMRDA's command that unions conduct free and democratic elections, Congress intended Section 401(e)'s authorization of reasonable qualifications to be narrowly construed. See *Wirtz* v. *Hotel Employees Union, Local 6*, 391 U.S. 492, 499 (1968). Moreover, the LMRDA's check on the power of incumbents is "seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to [them]." *Ibid.* In accordance with these principles, the Court in *Steelworkers* placed strong emphasis on the previous meeting-attendance rule's high rate of exclusion in holding that the rule was unreasonable. 429 U.S. at 309-310. The Court explained that "an attendance requirement that results in the exclusion of 96.5% of the members from candidacy for union office hardly seems to be a 'reasonable qualification' consistent with the goal of free and democratic elections." *Id.* at 310. The Court also rejected the union's argument that the rule was permissible because it imposed a qualification that any member could meet by attending 18 brief meetings

over a three-year period. *Id.* at 310-311. The Court concluded that the union's argument "misconceive[d] the evil at which the statute aims" because the eligibility rule must be judged "not by the burden it imposes on the individual candidate but by its effect on free and democratic processes of union government." *Id.* at 310-311 n.6. Moreover, the Court explained, even if examined as a procedure for qualification, the rule had a restrictive effect on union democracy because members' interest in changing union leadership is "likely to be at its highest only shortly before elections." *Id.* at 311.

The Court also rejected the union's argument that the rule was reasonable because it encouraged attendance at union meetings. *Steelworkers*, 429 U.S. at 312. The Court held that, given the members' low attendance rate, the rule had not served the purpose of generating attendance by members generally; and, as to encouraging the attendance of potential dissident candidates, the Court reiterated that "very few members * * * are likely to see themselves as [candidates] sufficiently far in advance of the election to be spurred to attendance by the rule." *Ibid.* Finally, the Court held that, as to the goal of assuring knowledgeable and dedicated leaders, Congress determined in the LMRDA that the best means to achieve that end is to leave the choice of leaders to the membership in open and democratic elections, unfettered by arbitrary exclusions that bar the bulk of members. *Ibid.*

In holding that the revised meeting-attendance rule at issue here is also not a reasonable qualification, the court of appeals considered the same factors that this Court considered in *Steelworkers*. As compared to the previous, invalid rule, the revised rule reduced the number of required meetings (to one-third of the meetings over a two-year period) and expanded the types of

excused absences.[3] The court of appeals first held that a condition of eligibility that disqualifies the vast bulk of the union's membership (here 92%) from standing for candidacy is presumptively unreasonable and shifts the burden to the union to present reasons justifying the rule. A presumption of unreasonableness finds strong support in this Court's bedrock conclusion in *Steelworkers* that a rule that excludes such a high percentage of the membership (there over 96%) "hardly seems to be a 'reasonable qualification' consistent with the goal of free and democratic elections." 429 U.S. at 310.

Petitioner does not directly challenge this burden-shifting analysis, but rather contends (Pet. 17) that the court of appeals unduly restricted the factors that can be considered to justify a rule. To substantiate this assertion, petitioner cobbles from disparate portions of the court of appeal's opinion "a three factor test" (Pet. 17 & n.3) that the court itself did not articulate or impose.[4] Contrary to petitioner's formulation, the court

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[3] The original rule allowed excuses only for absences due to a conflict with a member's union activities or working hours. *Steelworkers*, 429 U.S. at 306-307.

[4] For example, petitioner asserts that the third criterion of the lower court's test is that the union must "show that its meetings are conducted according to various procedures of that court's devising, such as mailing of agendas in advance of each meeting to all members." Pet. 17 n.3. This "criterion" is taken from a portion of the court's opinion in which the court described the absence of information in the record on the nature of petitioner's meetings. There is no indication in that discussion, Pet. App. 3a, or in the court's later formulation and application of its standard, *id.* at 6a-8a, that the court intended compliance with such supposed procedural requirements to constitute one criterion in a three-part test. Similarly, the court in its general discussion questioned the legitimacy of the union interest underlying the rule, when members, by dint of the excuse provision, can qualify without having attended a

of appeals held that a union could rebut the presumption by showing that a rule "is either not burdensome or though burdensome is supported by compelling need." Pet. App. 6a. That open-ended formulation permits consideration of all the factors contained in the Secretary's interpretive regulation addressing meeting-attendance rules, 29 C.F.R. 452.38(a), which this Court cited approvingly in *Steelworkers* and which petitioner appears to accept (Pet. 19) as the appropriate multi-factor test for determining reasonableness.

Moreover, the reasons that the court of appeals gave for concluding that the rule in this case was burdensome and unsupported by compelling need are harmonious with *Steelworkers*. For example, the court's determination that the rule imposed an undue burden was based, in large measure, on its recognition that an eight-monthly-meeting rule requires members to make up their minds about candidacy many months before the election. Pet. App. 7a. That consideration mirrors *Steelworkers*' recognition that issues that motivate union candidacy are likely to arise only shortly before the election. 429 U.S. at 311. And, although the time before the election by which a candidate was required to begin attending meetings was lengthier in *Steelworkers* than in this case—18 months instead of eight months—the issue of the precise period of time that crosses the reasonableness threshold is not worthy of this Court's review. That is particularly true here because the court of appeals' conclusion that eight months is too long is consistent with the conclusions of

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single meeting. *Id.* at 4a. In its application of the standard, however, the court nowhere stated, as petitioner contends (Pet. 20), that the existence of an excuse provision is fatal to a rule's reasonableness.

other courts of appeals on the question. See p. 13, *infra*.

The further ruling of the court of appeals that petitioner did not show an underlying purpose that would justify the rule also mirrors the Court's reasoning in *Steelworkers*. For example, as this Court had in *Steelworkers*, the court of appeals relied on the low turnout at union meetings as evidence that the rule was ineffective in accomplishing the goal of promoting attendance by members generally or by opponents of the incumbents in particular. Compare Pet. App. 7a with *Steelworkers*, 429 U.S. at 312. Moreover, the court reasonably relied on the union's failure to consider alternative means to induce attendance at meetings, or to make any argument that its interests would not be adequately served by a rule requiring attendance at fewer meetings, permitting a later decision to commit to running for office. Pet. App. 7a.

2. Petitioner contends (Pet. 11-18) that this Court's review is needed because the courts of appeals have read *Steelworkers* in "three different and irreconcilable ways." Pet. 11. Contrary to that contention, the courts of appeals have reached consistent holdings in cases that have presented different facts. Although petitioner identifies some divergence in statements that the different courts have made regarding the consequences when a meeting-attendance rule excludes a high percentage of the union membership, this Court "reviews judgments, not statements in opinions." *Black* v. *Cutter Labs.*, 351 U.S. 292, 297 (1956). Moreover, this case would not be an appropriate one in which to resolve any tension among the courts of appeals regarding whether the "percentage-disqualified factor [is] dispositive in meeting attendance rule cases" (Pet. 14), because the court of appeals here ruled in petitioner's

favor on that question. The court of appeals held that the 92% exclusion rate resulting from petitioner's rule did not alone render the rule invalid; rather, the court concluded that additional factors required the conclusion that the rule was unreasonable. Pet. App. 6a-8a.

a. In the 23 years since *Steelworkers*, three courts of appeals, other than the court of appeals in this case, have considered Section 401(e)'s "reasonable qualifications" standard in relation to meeting-attendance rules. In two of those cases, the courts held or strongly intimated that rules requiring attendance at meetings at least six months before the election were unreasonable. See *Marshall* v. *Local 1402, Int'l Longshoremen's Ass'n*, 617 F.2d 96, 97 & n.1 (5th Cir.) (invalidating rule requiring candidates to have attended at least one bimonthly meeting in each of the ten months preceding election and resulting in exclusion of 93.7% of membership), cert. denied, 449 U.S. 869 (1980); *Doyle* v. *Brock*, 821 F.2d 778 (D.C. Cir. 1987) (holding that the Secretary had acted arbitrarily and capriciously in failing to challenge an election in which the meeting-attendance rule required attendance at six monthly meetings in the year preceding the election and rendered 97% of the membership ineligible). In *Herman* v. *Springfield Massachusetts Area, Local 497, American Postal Workers Union* (*Postal Workers*), 201 F.3d 1 (2000), the First Circuit upheld a meeting-attendance rule that required attendance at only three monthly meetings during the twelve month period preceding the nominations meeting, even though the rule excluded a large percentage of the membership.

The judgment of the court of appeals in this case, which invalidated a rule requiring attendance at eight monthly meetings during the two years before the election, fits comfortably within the pattern of the post-

Steelworkers decisions. Rules, like the one at issue here, requiring attendance at six or more monthly meetings—and thus requiring members to have commenced attendance at meetings six or more months before the election—have been viewed as unreasonable. *Local 1402*, *supra* (ten meetings); Pet. App. 7a (eight meetings); *Doyle*, *supra* (six meeting requirement and high disqualification rate presented sufficient indicia of unreasonableness that Secretary must bring suit). On the other hand, the sole court of appeals decision to sustain a rule, the First Circuit's decision in *Postal Workers*, addressed a three-meeting rule, which clearly imposes a lesser (although not insubstantial) burden on the democratic process. Thus, the results in the four cases that have been decided since *Steelworkers* are fully consistent with one another.

b. Although the reasoning of the four decisions is not entirely uniform, petitioner exaggerates in asserting that the courts of appeals have approached the meeting-attendance question in "three different and irreconcilable ways." Pet. 11 (referring to the approaches of the court of appeals in this case, the First Circuit in *Postal Workers*, and the D.C. Circuit in *Doyle*).[5] Indeed, the court of appeals in this case concluded that the framework it endorsed—under which a rule's high rate of exclusion creates a presumption of unreasonableness but permits a union to demonstrate the rule's lack of burdensomeness or the union's compelling need—is consistent with *all* of the post-

[5] Petitioner ignores the Fifth Circuit's holding in *Local 1402*, that the ten-monthly-meeting rule there created a ten-month "advance-intention" requirement that was unreasonable. That holding is in substantial accord with the decision in this case that an eight-month "advance-intention" requirement is unreasonable.

Steelworkers appellate authority on meeting-attendance rules. Pet. App. 6a.

There is no basis for petitioner's contrary contention that the reasoning of the court of appeals here conflicts with the decision of the First Circuit in *Postal Workers*. The court of appeals here expressly agreed with the First Circuit that a rule's high rate of exclusion is not dispositive of the rule's validity, and the court distinguished the rule at issue here from the three-meeting rule approved in *Postal Workers* on the ground that the *Postal Workers* rule permitted a prospective candidate to come into compliance at a time much closer to the election. Pet. App. 7a-8a. Moreover, as previously explained (see p. 9 & note 4, *supra*), petitioner errs in describing the court of appeals' opinion in this case as applying a three-factor test that differs from the analysis in *Postal Workers*.[6]

Petitioner also errs in characterizing the District of Columbia Circuit as adopting in *Doyle* an inflexible rule that a meeting-attendance requirement that excludes a high percentage of union members from candidacy is always invalid. Neither the court of appeals in this case nor the First Circuit in *Postal Workers* read *Doyle* as establishing an absolutely rigid rule. See Pet. App. 6a (concluding that its decision was consistent with *Doyle*, "the *most* 'per se' of the opinions") (emphasis added); *Postal Workers*, 201 F.3d at 4 (stating that "[o]ne

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[6] Petitioner's assertion (Pet. 19) that it would prevail under the First Circuit's approach in *Postal Workers* is without basis. *Postal Workers* distinguished *Doyle* on the ground that it involved a six-meeting rule that was more burdensome than the one at issue in that case. 201 F.3d at 5. *Postal Workers*, in which the analysis did not range much beyond its holding rejecting a per se percentage test, thus gave absolutely no indication that an eight-month meeting-attendance rule would be approved by that Circuit.

circuit court decision [*Doyle*] does—*to some extent*—support the view" that a percentage test is conclusive) (emphasis added). As those courts correctly recognized, the District of Columbia Circuit permits a showing of a high rate of exclusion to be rebutted by a showing of compelling need. See 821 F.2d at 785. In that respect, the decision in *Doyle* is consistent with the analysis applied by the court of appeals in this case.[7]

Even if there were a divergence in approach on whether the "percentage-disqualified factor [is] dispositive in meeting attendance rule cases" (Pet. 14),

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[7] The District of Columbia Circuit and the Seventh Circuit may diverge on the narrow question whether a union can rebut the inference of unreasonableness that is raised by a high rate of exclusion by showing that the rule at issue is not actually burdensome. Compare 821 F.2d at 785 (rule must be justified by interests it advances) with Pet. App. 6a (rule may be justified by showing either that it is not burdensome or that it is supported by compelling need). Even if there is disagreement on that question, the standard applied by the court of appeals here is the one more favorable to petitioner, and the court held that petitioner had not satisfied it.

Moreover, the question whether there is a conflict in the circuits on this particular question is complicated by the fact that *Doyle* did not resolve whether the union rule at issue was reasonable under the LMRDA, but only whether the Secretary acted arbitrarily and capriciously in refusing to bring suit. See 821 F.2d at 783 n.4 (noting that the union, which was not a party to the suit, could raise other justifications and legal theories to defend the suit on the merits); *id.* at 787 (Silberman, J., dissenting) (noting that, had the Secretary brought suit on the merits, he might have been able to find common ground with the majority). Thus, if confronted directly with the reasonableness of a rule in a suit under Section 402(b), the District of Columbia Circuit could resolve that question differently, particularly in light of the intervening decisions in *Postal Workers* and this case, and decide that a rule with a high rate of exclusion, but a demonstrated lack of burden, is reasonable.

petitioner has not been aggrieved by the court of appeals' resolution of that issue. The court decided that question in petitioner's favor and held that the fact that the rule disqualified 92% of the membership was not dispositive. Pet. App. 6a. It permitted the union to attempt to show that the rule was justified despite its impact, either because it did not burden the democratic process or the burden was justified by countervailing interests. *Ibid.* The court, however, ultimately determined that the rule was burdensome and could not be justified on the ground advanced by petitioner—namely, that it was necessary to bolster meeting attendance and participatory democracy. *Id.* at 7a. Petitioner's rule is, accordingly, unreasonable whether judged by a per se percentage test or by the more flexible test employed by the court of appeals. There is therefore no reason to grant review in this case to consider which of those two approaches is correct.

3. Petitioner places heavy emphasis (Pet. 3, 5-6, 14, 15-16) on the history of the Department of Labor's enforcement of Section 401(e) with respect to meeting-attendance rules. Although that history reveals that the Department has altered its approach to meeting-attendance rules in the face of developments in the case law, nothing in the history suggests that the court of appeals committed legal error. Most of petitioner's discussion is designed to show that the Department has taken inconsistent positions with respect to whether a "multi-factor" or "per se percentage" test applies and to corroborate petitioner's position that a multi-factor test is the appropriate standard.[8] As we have explained,

[8] Petitioner errs in relying (Pet. 5, 19) on a 1978 letter from an Assistant Secretary of Labor to the International opining that a rule requiring attendance at one-third of the meetings in the 24

however, petitioner prevailed on that issue and obtained what was essentially a "multi-factor" analysis from the court of appeals, which correctly invalidated petitioner's meeting-attendance rule. See pp. 11-12, *supra*. Moreover, the court invalidated the rule, not because the court concluded the Secretary's regulation required that result, see Pet. App. 5a (rejecting deference to the Secretary's regulation), but because the court concluded that the language and purpose of the LMRDA and of this Court's *Steelworkers* decision required it.

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months preceding the election, with excuse provisions, would "be reasonable as to the number of meetings required to be attended and would not be subject to challenge because of the percentage of the membership which failed to qualify." Letter from Francis X. Burkhardt, Assistant Secretary of Labor, to Lloyd McBride & Lynn R. Williams, United Steelworkers 2 (Sept. 15, 1978). Petitioner neglects to point out that the Department informed the International in April 1994, well before the election in this case, that the Department no longer adhered to the opinion in the 1978 letter. Letter from Edmundo A. Gonzales, Deputy Assistant Secretary for Labor-Management Standards, to George F. Becker, International President, United Steelworkers (Apr. 19, 1994). The government's change of position does not bear on whether the court of appeals' decision in this case is correct because that court did not accord deference to the Department's views in holding that petitioner's meeting-attendance rule is unreasonable. Pet. App. 5a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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