

1366 AMENDING SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

PURPOSES OF H.R. 15626 AND CERTAIN COURT DECISIONS PERTINENT THERETO

The principal purposes of the bill are:

(1) To restore vitality to section 5(a)(1)(D) of the Subversive Activities Control Act of 1950 which made it unlawful for members of Communist-action organizations to engage in employment in a defense facility. This provision had been voided by the Supreme Court in *United States v. Robel*, decided December 11, 1967.

(2) To give express congressional sanction for the institution of measures and regulations establishing a security clearance program for employment in or access to defense facilities, for the purpose of safeguarding such facilities against sabotage, espionage, or other subversive activity. See *Greene v. McElroy*, 360 U.S. 474 (1959).

(3) To give express congressional sanction for the institution of measures and regulations establishing an industrial security clearance program for the protection of classified information released to United States industry or any facility in the United States. See *Greene v. McElroy*, supra; *Shoultz v. Secretary of Defense*, United States District Court, Northern District of California, decided February 9, 1968.

(4) To give express congressional authorization for the institution of measures and regulations establishing a personnel security clearance program for access to vessels, harbors, ports, and waterfront facilities under the Magnuson Act, to remedy a deficiency revealed by the Supreme Court in *Schneider v. Commandant, United States Coast Guard*, decided January 16, 1968.

(5) To establish procedures strengthening the administration and enforcement of the foregoing security programs by authorizing specific investigation, hearing, and review procedures, including the subject matter of inquiries, the cross-examination and confrontation of witnesses, the issuance of compulsory process for attendance of witnesses, the granting of immunity for compelled testimony, the regulation of jurisdiction of courts in certain proceedings, and authority for reimbursement to persons under certain circumstances for loss of earnings.

UNITED STATES V. EUGENE FRANK ROBEL

UNITED STATES SUPREME COURT, DECIDED DECEMBER 11, 1967

The decision

The opinion for the Court was delivered by Chief Justice Warren. Justice Brennan in a separate opinion concurred in the result. Justice White, with whom Justice Harlan joined, filed a dissenting opinion. Justice Marshall took no part in the consideration or the decision of the case.

In this case, the Supreme Court held section 5(a)(1)(D) of the Subversive Activities Control Act of 1950 to be void on its face for "overbreadth," unconstitutionally abridging the "right of association" protected by the first amendment.

Section 5(a)(1)(D) made it unlawful for any member of a "Communist-action organization," with knowledge or notice that such organization is registered or that there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, "to engage in any employment in any defense facility."

The term "defense facility" is defined in sections 3(7) and 5(b) of the act as any facility designated by the Secretary of Defense "with respect to the operation of which he finds and determines that the security of the United States requires the application of the provisions" of section 5(a).

Pursuant to the provisions of the act, the Secretary of Defense designated the Todd Shipyards Corporation of Seattle, Washington, as a "defense facility." Eugene Frank Robel, a member of the Communist Party of the United States, an organization which had been found by final order of the Board to be a "Communist-action organization," was employed at that shipyard as a machinist and was indicted under the provisions of section 5(a)(1)(D), charged with a violation of its provisions.

The district court granted Robel's motion to dismiss the indictment. The Supreme Court affirmed, although on a basis differing from that of the district