

1414 AMENDING SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

party of the right to judicial review results in the passage of considerable time before the appeal is decided.

The courts have held that they will consider the merits of an appeal only where the record is reasonably current. They have remanded cases to the Board for findings as to the current status of organizations when, through no fault of the Board, the cases lingered in the courts for a considerable time. This "staleness doctrine" seems to imply that the Board must perform the impossible duty of determining what the status of an organization will be a year or more in the future. It puts a premium on dilatory tactics during judicial review of Board determinations.

The existing statute contains ample safeguards, through redetermination proceedings, for any group that bona fide changes its status following a Board determination. We favor the proposal to require the appellate courts to decide the validity of an order of the Board at the time the order was issued by the Board.

Section 203, line 19, page 6, contains proposed Congressional findings of fact on the danger to the national security which reasonably can be said to exist if members of Communist-action organizations continue as employees of a defense facility after the organization has been determined by the Board to be of such type and the individuals have knowledge or notice thereof and elect to remain members.

Findings of fact are, of course, a matter for Congress. The proposed findings seem warranted from conclusions drawn by the Board in formal proceedings and from decisions and opinions of the courts. Your committee may wish to consider inserting the word "final" between the words "an" and "order" in line 8 at page 7.

Section 204, beginning at line 13 of page 7, contains a number of provisions aimed at preventing the employment in defense facilities of knowing and intentional Communists. We agree with the inherent principle that Communists operating in this country under foreign control and direction should not have access to any national security information.

It is clear under the Supreme Court's decision in the *Robel* case that there must be adequate standards in order legally to bar Communists from employment in defense facilities. The proposed provisions contain standards which were lacking in the provision declared unconstitutional in the *Robel* case. We have no opinion on whether the factors supplied by the provisions of H.R. 15828 are adequate in all respects. The provisions seem to us to be worthy of enactment so as to have them tested in the courts.

The Bureau of the Budget has advised by telephone that there is no objection to the submission of these views.

Sincerely,

JOHN W. MAHAN, *Chairman*.

SUBVERSIVE ACTIVITIES CONTROL BOARD,
OFFICE OF THE CHAIRMAN,
Washington, D.C., April 26, 1968.

Hon. EDWIN E. WILLIS,
Chairman, Committee on Un-American Activities,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN WILLIS: This is written in response to your request for our views or comments on H.R. 15626, 90th Congress, which contains provisions aimed at protecting the security of defense facilities. We note that H.R. 15828, which was also introduced in the 90th Congress, contains provisions having the same basic purpose.

We certainly agree with the purpose of barring active, knowing Communists and other security risks from access to classified national security information. We agree that in the light of court decisions express legislative authorization and specific standards are necessary in order to carry out this purpose.

H.R. 15626 takes a quite comprehensive approach to the problem. Much thought and effort was obviously given to drafting the proposed legislation. We have not attempted a line-by-line study of the procedures, standards, and criteria set forth in the bill. We defer to the Departments of Justice and Defense and the other departments and agencies which have been closely involved with the present industrial security program.

The proposed new section 5(a)(1)(C) would make it unlawful for any member of a Communist-action organization to engage in any employment in any