ance of the aforesaid objective, and the *likelihood* that an individual who willfully and knowingly chooses to be a member of a Communist organization (and thereby subject to Communist discipline) will act in furtherance of the aforesaid objective if given opportunity to do so, it is *per se a clear and present danger to the national security* to have employed in a defense facility an individual who, after the expiration of ninety days following an order of the Subversive Activities Control Board designating an organization as a Communist-action organization, and with knowledge or notice of such order, has elected to remain or to become a member of such organization." [Emphasis added.]

As is H.R. 15626, this section together with § 204 of H.R. 15828 is an attempt to overturn the recent Supreme Court decision in *United States* v. *Robel*. For numerous reasons, this section is constitutionally defective.

First, if applied, it would clearly infringe upon the freedoms of speech and expression protected by the first amendment of the United States Constitution. The Supreme Court has long held that Congress cannot curtail the full and free exercise of speech or advocacy of ideas unless it clearly demonstrates that the speech or advocacy of ideas in question presents a "clear and present danger" to some institution which Congress may legitimately protect:

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. *Schenck* v. *United States*, 249 U.S. 47, 52 (1919).

Section 203 declares it *per se* a clear and present danger to be a member of a Communist-action organization and at the same time be employed in a defense facility. This is an attempt by Congress by fiat to legislate into existence "a clear and present danger." Facts cannot be legislated by congressional whim.

In discussing H.R. 15626, we pointed out that the Supreme Court requires that congressional enactments which impose disabilities upon individuals for membership in organizations which advocate unpopular ideas must contain each of four elements: (1) the organization must have goals which are illegal and which Congress can constitutionally proscribe; (2) the individual member of the organization must *know* of these illegal goals; (3) the member must have the *specific intent* to further or accomplish such goals; and (4) the individual must be "*active*" and "not merely 'a nominal, passive, inactive or purely technical' member." See, e.g., *Scales* v. *United States*, 367 U.S. 203 (1961).

Section 203 fails to comply with these tests of constitutionality. It sets up a conclusive presumption that persons who knowingly and willfully become members of Communist organizations, and who remain members with knowledge or notice of an order of the Subversive Activities Control Board designating such an organization to be a "Communist-action organization", "*will act*" in furtherance of illegal goals which might threaten the government of the United States. It fails also to require that the individual member must have the specific intent to further the unlawful purposes or goals of the organization, or that he has participated in unlawful activities of the organization.

Even though the member does specifically intend to further the unlawful goals, if he does not actually "participate in its unlawful *activities*", *Elfbrandt* v. *Russell*, 384 U.S. at 17 (emphasis added), he cannot be punished for his mere mental state of mind. A congressional declaration of the "*likelihood*" that a member of a certain organization will act to further certain unlawful objectives is not enough. Inactive, passive, technical or merely nominal members, such as secretaries, janitors, or even social chairmen, who are in some sense "active" in the organization, do not in the slightest constitute a clear and present danger to the nation's security.

Section 203 of the 1968 amendments, if enforced, would also violate the right of association which is protected (see *United States* v. *Robel*, 389 U.S. 258 (1967)) by the provisions of the first amendment. A statute which "sweeps indiscriminately across all types of association with Communist-action groups, without regard to the quality and degree of membership . . . runs afoul of the First Amendment" and suffers from "the fatal defect of overbreadth . . . ." *Id.* at 258. Because § 203 makes it "irrelevant . . . that an individual may be a passive or inactive member of a designated organization, that he may be unaware of the organization's unlawful aims . . . that he may disagree with those unlawful aims," or that he may "occupy a nonsensitive position in a defense facility," see *United States* v. *Robel*, 389 U.S. 258; see also *Cole* v. *Young*, 351 U.S. 536, 546 (1955), it lacks that "[p]recision of regulation [which] must be the touchstone