

1426 AMENDING SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

Section 204(e) deletes from § 5(a) of the Internal Security Act all reference to "defense facilities" and inserts a new provision subsection (b), to deal with simultaneous membership in a Communist organization and employment in a defense facility. The new subsection (b) reads as follows:

"(b)(1) It shall be unlawful—

(A) for any member of a Communist organization, knowing or having reasonable grounds for believing such organization to be a Communist organization, in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such organization; or

(B) for any individual who is an active member of an organization, knowing such organization to be an organization as to which there is in effect a final order of the Subversive Activities Control Board by which such organization has been determined to be a Communist-action organization, and having subscribed or assented to any unlawful objective of such organization, to engage in any employment which may affect the national security of the United States in a facility which is designated as a defense facility (as defined by paragraph (7) of section 3 of the Subversive Activities Control Act of 1950) under a currently valid designation by the Secretary of Defense, with knowledge or with notice of such designation; or

(C) for any officer or employee of a defense facility (i) to contribute funds or services to a Communist organization, knowing or having reasonable grounds for believing such organization to be a Communist organization, or (ii) to advise, counsel, or urge any person, knowing or having reasonable grounds for believing that such person is a member of a Communist organization, to perform, or to omit to perform, any act if such act or omission would constitute a violation of paragraph (A) or (B) of subdivision (1) of this subsection."

Proposed subsection (b)(1)(A) would make it unlawful for members of Communist organizations to fail to disclose their membership in such organizations when seeking, accepting, or holding employment in a defense facility. Proposed subsection (b)(1)(C), would make it unlawful for any officer or employee of a defense facility to contribute funds or services to a Communist organization, or to advise, counsel or urge any member of a Communist organization to perform, or omit to perform, any act which would violate any provision of proposed subsection (b)(1).

According to proposed subsections (b)(1)(A) and (b)(1)(C), it is no longer necessary, for the section to become operative, that members of Communist organizations have "knowledge or (actual) notice" of a "final order of the Board" determining the organization to be a Communist-action or Communist-front organization; instead, they must *know* or have *reasonable grounds for believing* such organization to be "a Communist organization".

The proposed subsections vary from their counterparts in two respects. First, a final order of the Board is no longer necessary; individuals must determine *on their own* whether the organization in question is "Communist". Second, knowledge or actual belief that the organization in question is "subversive" is no longer required; instead, knowledge or *grounds for belief* that the organization in question is "subversive" is sufficient. The proposed amendments subject the "innocent" or passive member of a Communist organization to an even greater threat of unconstitutional punishment. The member may not know the organization is Communist; he may not even *believe* the organization is Communist. But if the Subversive Activities Control Board determines that the member had sufficient facts at his command himself to conclude the organization was Communist, even though in fact he reached no such conclusion, he will be subjected to the penalties of the 1950 Subversive Activities Control Act. Indeed, the Board need no longer even provide the member with the *warning* that it has determined the organization in question to be "Communist".

Subsections (a)(1)(C) and (a)(2) of § 5, even as they presently stand, are unconstitutional. The proposed amendments would subject the entire section to even greater constitutional doubt.

First, the compulsory disclosure of the fact of one's membership may in many cases infringe upon the constitutionally protected right of association. See *N.A.A.C.P. v. State of Alabama*, 357 U.S. 449 (1958); *Bates v. City of Little Rock*, 361 U.S. 516 (1960); *Shelton v. Tucker*, 364 U.S. 479 (1960). Not