

1520 AMENDING SUBVERSIVE ACTIVITIES CONTROL ACT OF 1950

Section 2 of the proposed amendment defines the term Communist-action organization as used in the subsection in substantially the same language as that contained in Section 782(3)(a) of Title 50, U.S.C. Section 204 also defines the term Communist organization to include a Communist-action organization and any organization in the United States which is substantially directed, dominated or controlled by a Communist-action organization or is substantially directed, dominated or controlled by one or more members of a Communist-action organization and operated primarily for the purpose of giving aid and support to a Communist-action organization.

With respect to the employment of Communists in defense facilities, Section 204 would appear to be subject to the same objection the Supreme Court found in the case of *United States v. Robel*, 389 U.S. 258, in that there is no need to establish that the individual poses the threat the Government seeks to prevent.

In the *Robel* case, the Supreme Court held that Section 5(a)(1)(D) of the Internal Security Act established guilt by association alone, without any need to establish that an individual's association posed the threat feared by the Government in proscribing it. The Court also pointed out that the statute made it irrelevant whether an individual might be a passive or inactive member of an organization designated by the Board, or that he may be unaware of the organization's unlawful aims, or disagree with those unlawful aims.

The proposed amendment seeks to meet the objections which the Supreme Court noted with respect to Section 5(a)(1)(D) in the *Robel* case. Thus, the proposed amendment would prohibit defense facility employment of those members of Communist-action organizations who are active members and who subscribe or assent to some unlawful objective of the organization. It is noted that the term "any unlawful objective" of the amendment is quite broad and is not confined to the commission of acts of sabotage or related subversive acts. Although we support the purposes of Section 204, we note that the measure of proof required under this amendment would be quite difficult to obtain.

In any event, there are substantial questions as to whether the proposed amendment would meet the criteria of constitutionality expressed by the Supreme Court in the *Robel* case and related cases dealing with the imposition of criminal sanctions as a result of a person's membership in the Communist Party. Consequently, we object to the enactment of Section 204 as presently drafted.

Title III of the Bill deals with reprisals against congressional witnesses.

Section 301 would amend Section 1505 of Title 18, U.S.C. by making it a felony for any official of the Executive Branch of the Government to cause an employee to be demoted, suspended, dismissed, retired or otherwise disciplined as a result of his attendance at any inquiry being held by a committee of Congress or as a result of his testimony before any committee unless such testimony discloses misconduct on his part. Adverse action taken against an employee within a year of his attendance or testimony shall be considered *prima facie* evidence that such action was taken as a result of the employee's testimony.

Section 301 would also amend Section 3486 of Title 18, U.S.C., which deals with immunity as a result of incriminating testimony by adding a new subsection (e). This provision would prevent the demotion, suspension, etc., of any witness who is a member of the Armed Forces or an officer or employee of the Executive Branch as a result of testifying or furnishing official papers or records before a congressional committee, unless such testimony is given or official papers or records are produced in violation of law or they disclosed misconduct on the part of the witness.

Section 302 forbids any reprisal by the Executive Branch through its officials in any manner or by any means not prohibited by Section 1505 of Title 18, U.S.C., against any witness who testifies before a congressional committee or any officer or employee of the Executive Branch who furnishes any congressional committee, chairman or member thereof, any information or any document disclosing any wrongdoing or breach of security in such agency. Persons who violate this section by ordering or initiating such a reprisal or urging, advising or attempting to bring it about are punishable by imprisonment not to exceed one year or a fine not to exceed \$1,000. It is noted that the punishment for violating Section 301 consists of imprisonment of not more than five years or a fine of not more than \$5,000, or both. The penalty under Section 301 appears excessive, particularly in view of the one year penalty under Section 302 of the Bill.

In our view these sections present several problems. First, it might be noted that the provision regarding attendance at hearings is extremely broad and is not limited to attendance upon congressional request or at hearings relating to