

UNITED STATES *v.* ROBEL.

or ill, should be prohibited from working within them in any capacity, sensitive or innocuous, under threat of criminal prosecution. In resolving this conflict of interests, the Secretary's judgment, colored by his overriding obligation to protect the national defense, is not a constitutionally acceptable substitute for Congress' judgment, in the absence of further, limiting guidance.⁵

The need for a legislative judgment is especially acute here, since it is imperative when liberty and the exercise of fundamental freedoms are involved that constitutional rights not be unduly infringed. *Cantwell v. Connecticut, supra*, 310 U. S., at 304. Before we can decide whether it is an undue infringement of protected rights to send a person to prison for holding employment at a certain type facility, it ought at least to appear that Congress authorized the proscription as warranted and necessary. Such congressional determinations will not be assumed. "They must be made explicitly not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized . . . but also because explicit action, especially in areas of doubt-

⁵ The Secretary has published criteria which guide him in applying the statute:

"The list of 'defense facilities' is comprised of (1) facilities engaged in important classified military projects; (2) facilities producing important weapons systems, subassemblies and their components; (3) facilities producing essential common components, intermediates, basic materials and raw materials; (4) important utility and service facilities; and (5) research laboratories whose contributions are important to the national defense. The list, which will be amended from time to time as necessary, has been classified for reasons of security."

Department of Defense Release No. 1363-62, Aug. 20, 1962. These broad standards, which might easily justify applying the statute to most of our major industries, cannot be read into the statute to limit the Secretary's discretion, since they are subject to unreviewable amendment.