

## OCTOBER TERM, 1958.

CLARK, J., dissenting.

360 U. S.

strikes down the present regulations as being insufficiently authorized by either the President or the Congress because the procedures fail to provide for confrontation or cross-examination at Board hearings. Let us first consider that problem.

## I. THE CONSTITUTIONAL ISSUE.

After full consideration the Court concludes "that in the absence of explicit authorization from either the President or Congress the respondents were not empowered to deprive petitioner of his job in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination." In so doing, as I shall point out, it holds for naught the Executive Orders of both President Roosevelt and President Truman and the directives pursuant thereto of every Cabinet officer connected with our defense since 1942 plus the explicit order of General Dwight D. Eisenhower as Chief of Staff in 1946. In addition, contrary to the Court's conclusion, the Congress was not only fully informed but had itself published the very procedures used in Greene's case.

I believe that the Court is in error in holding, as it must, in order to reach this "authorization" issue, that Greene's "right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference" is protected by the Fifth Amendment. It cites four cases in support of this proposition and says compare four others. As I read those cases not

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of government operation, say that the relief which Greene seeks here—and which the Court now grants—is "in substance, a mandatory injunction requiring that the Government show him (or, in practice, allow contractors to show him) defense secrets, notwithstanding the judgment of the executive branch that such disclosure might jeopardize the national safety." Brief for the United States, 48.