present or impending products of advocacy of the doctrines of Communism or the expression of belief in overthrow of the Government by force. On the contrary, it points out that such strikes are called by persons who, so Congress has found, have the will and power to do so *without* advocacy or persuasion that seeks acceptance in the competition of the market."[506]

The test, rather, must be one of balancing of interests. "When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgement of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented."[507] As the interest in the restriction, the government's right to prevent political strikes and the disruption of commerce, was much more substantial than the limited interest on the other side in view of the relative handful of persons affected in only a partial manner, the Court perceived no difficulty upholding the statute.[508]

Justice Frankfurter, in his concurring opinion in *Dennis v. United States*,[509] rejected the applicability of clear and present danger and adopted a balancing test. "The demands of free speech in a democratic society as well as the interest in national security are better served by candid and informed weighing of the competing interest, within the confines of the judicial process, than by announcing dogmas too inflexible for the non-Euclidian problems to be solved."[510] But the "careful weighing of conflicting interests"[511] not only placed in the scale the disparately weighed interest of government in self-preservation and the interest of defendants in advocating illegal action, which alone would have determined the balance, it also involved the Justice's philosophy of the "confines of the judicial process" within which the role of courts, in First Amendment litigation as in other, is severely limited. Thus, "[f]ull responsibility" may not be placed in the courts "to balance the relevant factors and ascertain which interest in the circumstances [is] to prevail." "Courts are not representative bodies. They are not designed to be a good reflex of a democratic society." Rather, "[p]rimary responsibility for adjusting the interests which compete in the situation before us of necessity belongs to the Congress."[512] Therefore, after considering at some length the factors to be balanced, Justice Frankfurter concluded:

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[506] American Communications Ass'n v. Douds, 339 U.S. 382, 396 (1950).
[507] 339 U.S. at 399.
[508] 339 U.S. at 400–06.
[509] 341 U.S. 494, 517 (1951).
[510] 341 U.S. at 524–25.
[511] 341 U.S. at 542.
[512] 341 U.S. at 525.