lic places.[525] But the only case in which it was specifically rejected involved a statutory regulation like those that had given rise to the test in the first place. *United States v. Robel*[526] held invalid under the First Amendment a statute that made it unlawful for any member of an organization that the Subversive Activities Control Board had ordered to register to work in a defense establishment.[527] Although Chief Justice Warren for the Court asserted that the vice of the law was that its proscription operated *per se* "without any need to establish that an individual's association poses the threat feared by the Government in proscribing it,"[528] the rationale of the decision was not clear and present danger but the existence of less restrictive means by which the governmental interest could be accomplished.[529] In a concluding footnote, the Court said: "It has been suggested that this case should be decided by 'balancing' the governmental interests . . . against the First Amendment rights asserted by the appellee. This we decline to do. We recognize that both interests are substantial, but we deem it inappropriate for this Court to label one as being more important or more substantial than the other. Our inquiry is more circumscribed. Faced with a clear conflict between a federal statute enacted in the interests of national security and an individual's exercise of his First Amendment rights, we have confined our analysis to whether Congress has adopted a constitutional means in achieving its concededly legitimate legislative goal. In making this determination we have found it necessary to measure the validity of the means adopted by Congress against both the goal it has sought to achieve and the specific prohibitions of the First Amendment. But we have in no way 'balanced' those respective interests. We have ruled only that the Constitution requires that the conflict between congressional power and individual rights be accommodated by legislation drawn more narrowly to avoid the conflict."[530]

The "Absolutist" View of the First Amendment, With a Note on "Preferred Position".—During much of this period, the opposition to the balancing test was led by Justices Black and Douglas, who espoused what may be called an "absolutist" position, denying

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[525] *E.g.*, Cox v. Louisiana, 379 U.S. 536 and 559 (1965) (2 cases); Edwards v. South Carolina, 372 U.S. 229 (1963); Adderley v. Florida, 385 U.S. 39 (1966); Brown v. Louisiana, 383 U.S. 131 (1966). *But see* Lloyd Corp. v. Tanner, 407 U.S. 551 (1972), where balancing reappears and in which other considerations overbalance the First Amendment claims.

[526] 389 U.S. 258 (1967).

[527] Subversive Activities Control Act of 1950, § 5(a)(1)(D), 64 Stat. 992, 50 U.S.C. § 784(a)(1)(D).

[528] United States v. Robel, 389 U.S. 258, 265 (1967).

[529] 389 U.S. at 265–68.

[530] 389 U.S. at 268 n.20.