

front organizations” could be curbed.⁶⁹⁸ Organizations found to fall within one or the other of these designations were required to register and to provide for public inspection membership lists, accountings of all money received and expended, and listings of all printing presses and duplicating machines; members of organizations which failed to register were required to register and members were subject to comprehensive restrictions and criminal sanctions. After a lengthy series of proceedings, a challenge to the registration provisions reached the Supreme Court, which sustained the constitutionality of the section under the First Amendment, only Justice Black dissenting on this ground.⁶⁹⁹ Employing the balancing test, Justice Frankfurter for himself and four other Justices concluded that the threat to national security posed by the Communist conspiracy outweighed considerations of individual liberty, the impact of the registration provision in this area in any event being limited to whatever “public opprobrium and obloquy” might attach.⁷⁰⁰ Three Justices based their conclusion on findings that the Communist Party was an anti-democratic, secret organization that was subservient to a foreign power and that used more than speech in attempting to achieve its ends, and was therefore subject to extensive governmental regulation.⁷⁰¹

Punishment for Membership in an Organization That Engages in Proscribed Advocacy.—The Smith Act provision making it a crime to organize or become a member of an organization that teaches, advocates, or encourages the overthrow of government by force or violence was used by the government against Communist Party members. In *Scales v. United States*,⁷⁰² the Court affirmed a conviction under this section and held it constitutional against First Amendment attack. Advocacy such as the Communist Party engaged in, Justice Harlan wrote for the Court, was unprotected

⁶⁹⁸ Ch. 1024, 64 Stat. 987. Sections of the Act requiring registration of Communist-action and Communist-front organizations and their members were repealed in 1968. Pub. L. 90-237, § 5, 81 Stat. 766.

⁶⁹⁹ *Communist Party v. SACB*, 367 U.S. 1 (1961). The Court reserved decision on the self-incrimination claims raised by the Party. The registration provisions ultimately floundered on this claim. *Albertson v. SACB*, 382 U.S. 70 (1965).

⁷⁰⁰ 367 U.S. at 102.

⁷⁰¹ 367 U.S. at 170–75 (Justice Douglas dissenting on other grounds), 191 (Justice Brennan and Chief Justice Warren dissenting on other grounds). Justice Black’s dissent on First Amendment grounds argued that “Congress has [no] power to outlaw an association, group or party either on the ground that it advocates a policy of violent overthrow of the existing Government at some time in the distant future or on the ground that it is ideologically subservient to some foreign country.” *Id.* at 147.

⁷⁰² 367 U.S. 203 (1961). Justices Black and Douglas dissented on First Amendment grounds, *id.* at 259, 262, while Justice Brennan and Chief Justice Warren dissented on statutory grounds. *Id.* at 278