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IN THE

Supreme Court of the United States

October Term, 1956 7

No. ~~846~~

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,
Petitioner,

v.

STATE OF ALABAMA, *ex rel.* JOHN PATTERSON, Attorney General.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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STATE OF ALABAMA, *ex rel.* JOHN PATTERSON, Attorney General.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Alabama entered on December 6, 1956, in the above-entitled cause.

Opinion Below

The opinion of the Supreme Court of Alabama is reported at 91 So. 2d (Adv. p. 214) and is printed as Appendix A, *infra,* page 1a. The *ex parte* temporary restraining order issued by the Circuit Court of Montgomery County is printed in Appendix B, *infra,* page 10a. The interlocutory order ordering petitioner to give the Attorney General the names and addresses of all of its members in Alabama and other documents is printed in Appendix B, *infra,* page 11a. The opinion of the Circuit Court, entered on July 25, 1956, adjudging petitioner in contempt and affixing a fine of $10,000 as punishment therefor, and a supplementary fine of $100,000 if the contempt were not purged within 5 days, is printed in Appendix B, *infra,*

page 13a. The order of the Circuit Court of July 31 adjudging petitioner in further contempt and affixing the fine of $100,000 as punishment therefor is printed in Appendix B, *infra,* page 17a.

Jurisdiction

The judgment of the Supreme Court of Alabama was entered on December 6, 1956 (R. 30). Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3), petitioner having asserted in the courts below rights, privileges and immunities conferred by the Constitution and laws of the United States. By order of Mr. Justice Black of March 4, 1957, time to file this petition was extended to and including March 20, 1957.

How the Federal Questions Were Presented

The judgment of which review is sought is the judgment of the Supreme Court of Alabama denying and dismissing petitioner's original petition for writ of certiorari seeking to review an adjudication of contempt by the Circuit Court of Montgomery County.

In substance, the allegations before the Supreme Court of Alabama, insofar as pertinent to the jurisdiction of this Court, were that petitioner had been denied constitutional rights guaranteed by the First and Fourteenth Amendments in that the Circuit Court had issued and enforced by contempt an order that petitioner submit a list of names and addresses of its members, officers, employees and agents in the State of Alabama, notwithstanding petitioner's assertion and showing that to do so would subject these persons to private economic reprisals, loss of public and private employment, harassment by persons opposed to integration of the public schools, intimidation, threats of force and actual force (R. 8-10); and in that the judgment of contempt had barred petitioner's access to Alabama courts to litigate its rights to engage in lawful activities in Alabama (R. 3, 11-13).

Opposition to the motion for petitioner to produce various records for the examination of the Attorney General and to the order of the Circuit Court granting this motion were based on these constitutional grounds (R. 4). After being adjudged guilty of contempt, petitioner asserted these rights in motions to stay or set aside the contempt order filed in the Circuit Court and in the Supreme Court of Alabama (R. 6-10) and in its petitions for writ of certiorari filed in the Supreme Court of Alabama (R. 10). The motion to dissolve the temporary restraining order and injunction and the answer were also based on these grounds (R. 5-6).

How the Federal Questions Were Disposed Of

The Supreme Court of Alabama held that petitioner could not raise its constitutional objections on petition for writ of certiorari. It denied and dismissed the petition, holding that it could quash the order of contempt only if (1) the Circuit Court "lacked jurisdiction of the proceeding," or (2) "where on the face of it the order disobeyed was void," or (3) "where procedural requirements with respect to citation of contempt and the like were not observed," or (4) "where the fact of contempt is not sustained" (R. 23-24). The court decided that mandamus would have been the proper remedy.

But prior to this decision and even in prior proceedings in this case,[1] certiorari had been recognized by the Supreme Court of Alabama as an available remedy to review the merits of a contempt action of the type here complained of. *Ex parte Morris,* 252 Ala. 557, 42 So. 2d 17 (1944); *Ex parte*

[1] Ex parte National Association for the Advancement of Colored People, a Corporation: In re State of Alabama ex rel. John Patterson, Att'y Gen. v. National Association for the Advancement of Colored People, 91 So. 2d (Adv. p. 220) (on motion for stay); Ex parte National Association for the Advancement of Colored People, a Corporation: In re State of Alabama, ex rel. John Patterson, Att'y Gen. v. National Association for the Advancement of Colored People, 91 So. 2d (Adv. p. 221) (on petition for certiorari).

Wheeler, Judge, 231 Ala. 356, 358, 165 So. 74 (1935); *Ex parte Dickens,* 162 Ala. 272, 50 So. 218 (1909); *Ex parte Boscowitz,* 84 Ala. 463, 4. So. 279 (1888); *Ex parte Blakey,* 240 Ala. 517, 199 So. 857 (1941); *Ex parte Sellers,* 250 Ala. 87, 33 So. 2d 349 (1948).

Although the Supreme Court of Alabama did not expressly rule upon petitioner's federal constitutional rights,[2] it nevertheless so disposed of these allegations as to confer jurisdiction upon this Court. Actual determination by the state court of the federal question in terms is not required. *Lawrence* v. *State Tax Commission of Mississippi,* 286 U. S. 276, 282; *Dorchy* v. *Kansas,* 272 U. S. 306, 308-309; *Dewey* v. *Des Moines,* 173 U. S. 193, 199. Moreover, the fact that a decision purports to rest upon state grounds does not preclude this Court from deciding whether federal constitutional rights were in fact denied. *Williams* v. *Georgia,* 349 U. S. 375; *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill,* 281 U. S. 673, 681-682; *Davis* v. *Wechsler,* 263 U. S. 22; *Rogers* v. *Alabama,* 192 U. S. 226.

Questions Presented

I

Whether the refusal of petitioner to produce names and addresses of its Alabama members was protected by the Fourteenth Amendment's interdiction against state interference with First Amendment rights?

II

Whether the order to produce, the judgment of contempt for failure to produce, and the refusal of the Supreme Court of Alabama to review and reverse said judgment denied to petitioner and its members rights guaranteed by the Fourteenth Amendment?

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[2] After deciding not to review the order of the trial court the Supreme Court of Alabama did "discuss" some of the constitutional questions involved in the petition. (Appendix A, p. 7a).

Statement of the Case

On June 1, 1956, without notice or opportunity for hearing, the Circuit Court of Montgomery County, Alabama, on the complaint of respondent State of Alabama,[3] issued a

[3] The complaint alleged: (1) That petitioner, a New York Corporation, maintains its Southeast Regional Office in Birmingham, Alabama; (2) that petitioner has employed agents to operate this office; (3) that local chapters of petitioner are organized in the State of Alabama; (4) that membership dues and contributions for said chapters and petitioner are solicited; (5) that petitioner had paid monies to Autherine Lucy and Polly Myers Hudson to aid them to enroll as students at the University of Alabama to test its policy of denying entrance to Negroes; (6) that petitioner has furnished legal counsel to represent Autherine Lucy in her proceedings against the University of Alabama; (7) that petitioner has supported and financed an illegal boycott to compel the Capitol Motor Lines of Montgomery, Alabama, to seat passengers without reference to race; (8) that petitioners' officers, agents and members have for years past and are presently engaged in organizing chapters in the State of Alabama, in collecting dues therefor, soliciting contributions and expending monies in advancing the aims of petitioner; (9) that petitioner has never filed with the Secretary of State a certified copy of its Articles of Incorporation and other information required by Title 10, Sections 192, 193 and 194 of the Code of Alabama, 1940; (10) that petitioner has been and continues to do business in the State of Alabama and in the County of Montgomery in violation of Article 12, Section 232, Constitution of Alabama, 1901, and Section 194, Title 10, Code of Alabama, 1940; (11) that petitioner is continuing to do business within the state without first having complied with the aforesaid constitutional and statutory provisions and is thereby causing irreparable injury to the property and civil rights of the citizens of Alabama for which criminal prosecution and civil action at law afford no adequate relief.

The state prayed for a temporary injunction enjoining and restraining petitioner, its agents and members from further conducting its business within the state and organizing chapters and maintaining offices within the state; it requested dissolution of all existing chapters of the organization and that upon final hearing the court issue a permanent injunction embodying the foregoing and oust petitioner from the state (R. 2).

temporary restraining order and injunction forbidding petitioner, its agents and members from conducting any business whatsoever within the State of Alabama and from:

> "Soliciting membership in respondent corporation or any local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.
>
> "Soliciting contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.
>
> "Collecting membership dues or contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama."

Although the State did not request it, the court also enjoined petitioner from:

> "Filing with the Department of Revenue and the Secretary of State of the State of Alabama any application, paper or document for the purpose of qualifying to do business within the State of Alabama (App. B, pp. 10a-11a)."

On July 2, 1956, petitioner filed a motion to dissolve the temporary restraining order and demurrers to the bill of complaint which were set for hearing on July 17. On July 5th the State filed a motion to require petitioner to produce certain records, letters and papers alleging that the examination of the papers was essential to its preparation for trial (R. 3).

The state's motion was set for hearing on July 9, 1956. After hearing, at which petitioner raised both state and federal constitutional objections, the court issued an order requiring production of the following items requested in the state's motion:

> "1. Copies of all charters of branches or chapters of the National Association for the Advancement of Colored People in the State of Alabama.

"2. All lists, documents, books and papers showing the names, addresses and dues paid of all present members in the State of Alabama of the National Association for the Advancement of Colored People, Inc."

"4. All lists, documents, books and papers showing the names, addresses and official position in respondent corporation of all persons in the State of Alabama authorized to solicit memberships in and contributions to the National Association for the Advancement of Colored People, Inc.

"5. All files, letters, copies of letters, telegrams and other correspondence, dated or occurring within the last twelve months next preceding the date of filing the petition for injunction, pertaining to or between the National Association for the Advancement of Colored People, Inc., and persons, corporations, associations, groups, chapters and partnerships within the State of Alabama.

"6. All deeds, bills of sale and any written evidence of ownership of real or personal property by the National Association for the Advancement of Colored People, Inc., in the State of Alabama.

"7. All cancelled checks, bank statements, books, payrolls, and copies of leases and agreements, dated or occurring within the last twelve months next preceding the date of filing the petition for injunction, pertaining to transactions between the National Association for the Advancement of Colored People, Inc., and persons, chapters, groups, associations, corporations and partnerships in the State of Alabama.

"8. All papers, books, letters, copies of letters, documents, agreements, correspondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People, Inc. and Autherine Lucy, Autherine Lucy Foster and Polly Myers Hudson."

"11. All lists, books and papers showing the names and addresses of all officers, agents, servants and employees in the State of Alabama of the National Association for the Advancement of Colored People, Inc."

> "14. All papers, books, letters, copies of letters, files, documents, agreements, correspondence and other memoranda pertaining to or between the National Association for the Advancement of Colored People, Inc., and Aurelia S. Browder, Susie McDonald, Claudette Colvin, Q. P. Colvin, Mary Louise Smith and Frank Smith, or their attorneys, Fred D. Gray and Charles D. Langford" (R. 4, 18-20).

The court then extended the time to produce until July 24th, and simultaneously postponed the hearing on petitioner's demurrers and motion to dissolve the *ex parte* temporary injunction to July 25.

On July 23 petitioner filed its answer on the merits.[4] In addition, petitioner averred that it had procured the

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[4] Petitioner admitted: (1) That it was a New York corporation; (2) that it maintained its Southeast Regional Office in Birmingham; (3) that it hired and employed agents to operate this office; but denied (4) that it had organized local chapters in the state and that agents of the Corporation solicited for said local chapters and the parent corporation; denied (5) that it had employed or paid money to Autherine Lucy and Polly Myers Hudson to encourage or aid them in enrolling in the University of Alabama; admitted (6) furnishing legal counsel to assist Autherine Lucy in prosecuting her suit against the University of Alabama; admitted (7) that it had given moral and financial support to Negro residents of Montgomery in connection with their refusal to use the public transportation system of Montgomery and had furnished legal counsel to assist Rev. M. L. King and other Negroes indicted in connection with that matter, but denied all other allegations and inferences contained in that allegation and bill of complaint; and denied (8) that its officers, agents or employees have engaged in organizing chapters for the Corporation in Alabama and Montgomery County, collecting dues, soliciting memberships, loaning or giving personal property to aid present aims of the corporation; admitted (9) that it had never filed with the Secretary of State Articles of Incorporation or designated a place of business or authorized agents within the State; but denied (10) that it was required by Sections 192, 193 and 194 of Title 10, Code of Alabama to do so. Petitioner denied that it had violated Article 12, Section 232, Constitution of Alabama, 1901 and Sections 192, 193 and 194, Title 10, Code of Alabama, 1940; further petitioner denied (11) that its acts were causing irreparable injury to the property and civil rights of the residents and citizens of the State of Alabama (R. 5).

necessary forms for the registration of a foreign corporation supplied by the office of the Secretary of State of the State of Alabama and filled them in as required. Petitioner attached them to its answer and offered to file same if the court would dissolve the order barring petitioner from registering (R. 5-6).

At the same time petitioner filed a motion to set aside the order to produce which motion was set down for hearing on July 25th. On that date, the court overruled the motion to set aside and ordered petitioner to produce the items as above stated. Petitioner, realizing that to produce its membership lists would lead to irreparable harm and being advised by counsel that the order was arbitrary and unreasonable and violative of the Constitution and laws of the State of Alabama and of the United States, informed the court that it was unable to comply with the court's order. Whereupon the court at the same hearing found petitioner in contempt and assessed a fine of $10,000 against the petitioner as punishment for this contempt.[5] The court also ordered that unless petitioner fully complied with its order to produce within five days the fine would be increased to $100,000. The motion to dissolve was not heard and all proceedings thereon were terminated.

On July 30 petitioner filed in the trial court a motion to set aside and/or stay execution of said order pending review by the Supreme Court of Alabama and tendered substantial compliance.[6] However, petitioner asserted that

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[5] See Appendix B, p. 13a.

[6] As to paragraph 1 of the state's motion, petitioner tendered a copy of its standard form of charter stating that it retained no copies of charters but that all charters issued conformed to the tendered form.

As to paragraph 4 it stated that with the exception of two named persons in the State of Alabama those who solicited membership for

it could not produce the names and addresses of its members, as requested in paragraphs 2 and 11 of the state's motion, because it believed in good faith that making these available would constitute a waiver of basic constitutional rights and would subject said persons to private economic reprisals, loss of public and private employment, harassment by persons opposed to the desegregation of public schools and to actual physical violence and force. Petitioner tendered in support thereof the affidavit of its executive secretary and affidavits of members residing in Selma, Alabama, whose names had been published as signers of a petition requesting the board of education to consider desegregating its public schools and, as a result, had been discharged from employment. Petitioner also tendered

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the Corporation were volunteers and petitioner prescribed no restriction in this regard.

As to paragraph 5 of the state's motion, petitioner stated that its files were kept on a subject matter basis, that it receives correspondence at the rate of 50,000 letters per year and that its files are maintained for a period of 10 years and that to furnish this information would require a search of all these files. But petitioner tendered copies of all memoranda to branches which it issued during the twelve month period preceding June 1, 1956.

As to paragraph 6, petitioner asserted that it owned no real property, that all bills of sale, with the exception of two which petitioner tendered, for purchase of personal property, were in the possession of an employee who was on vacation, that the only personal property petitioner owned in the State consisted of office equipment and supplies valued at approximately $400.00.

As to paragraph 7, petitioner submitted all cancelled checks, payroll checks covering transactions in Alabama, a copy of the lease of its office in Alabama and averred that no other agreements existed, that it did not maintain a bank account in the State. Petitioner also tendered a statement showing all income and expenditures in the State.

As to paragraph 8, petitioner submitted all papers, books and letters pertaining to or between it and Autherine Lucy Foster and Polly Myers Hudson.

As to paragraph 14 petitioner asserted that it had no such papers.

evidence that laws applicable to Macon and Marengo counties authorized the boards of education of these counties to discharge teachers belonging to organizations advocating racial integration, and newspaper clippings demonstrating that there were groups operating in the State for the express purpose of ruthlessly opposing the program and policy advocated by petitioner and its members (R. 9-11).

This motion was denied (R. 10, 21), and on the same day petitioner filed a motion in the Supreme Court of Alabama to stay execution of the judgment below pending review by that court. Argument on this motion was heard on July 31, and it was denied that day on the ground that no petition for writ of certiorari was before the court. The Supreme Court of Alabama held that:

> "It is the established rule of this Court that the proper method of reviewing a judgment for civil contempt of the kind here involved is by a petition for common law writ of certiorari. And this Court has through the years felt impelled to grant the writ for purposes of review where a reasonable ground for its issuance is properly presented in such petition.
>
> "But the petitioner here has not applied for writ of certiorari, and we do not feel that the petition presently before us warrants our interference with the judgment of the Circuit Court of Montgomery County here sought to be stayed."[7]

While the Supreme Court of Alabama was considering petitioner's application for a stay, the Circuit Court entered the order adjudging petitioner in further contempt, increasing the fine to $100,000.00.[8]

The effect of these orders was not merely to hold petitioner in contempt but to bar a hearing on petitioner's

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[7] 91 So. 2d (Adv. p. 220).

[8] See Appendix B, p. 17a.

fundamental objections to the temporary restraining order and injunction which ousted petitioner from Alabama.

On August 8 petitioner filed a petition for a writ of certiorari (3 Div. 773) in the Supreme Court of Alabama alleging with some detail that the actions of the court below had denied petitioner rights conferred by the First and Fourteenth Amendments to the Constitution of the United States and Article 1, Section 8. It was argued on August 13, 1956, and that same day the Supreme Court of Alabama denied the writ with an order which merely stated that "The averments of the Petition for Writ of Certiorari to the Montgomery Circuit Court, in Equity, are insufficient to grant a Writ of Certiorari."[9]

Thereupon, on August 20, 1956, petitioner filed a more detailed petition for writ of certiorari (3 Div. 779) which, along with the judgment and opinion of the Supreme Court of Alabama, constitutes the certified record filed in this Court. On December 6, 1956, the Supreme Court of Alabama refused to grant this petition on the ground that petitioner could not by certiorari raise the issues presented.

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[9] 91 So. 2d (Adv. p. 221).

Reasons for Allowance of the Writ

I

The Judgment Below, While Appearing To Be Based Upon State Procedural Grounds, Is Nevertheless Reviewable By This Court.

As set out *supra,* under Jurisdiction, the opinion below purports to decide this case on a non-federal ground. Federal rights, however, may be denied as much by refusal of a state court to decide questions as by its erroneous decision. *Lawrence* v. *Mississippi,* 286 U. S. 276, 282. In numerous cases this Court has held review was warranted where federal questions were fairly presented, were necessary to the determination of the cause, and there existed no adequate non-federal ground upon which the decision below could have been properly based. *Dorchy* v. *Kansas,* 272 U. S. 306, 308-309; *Erie R. Co.* v. *Purdy,* 185 U. S. 148, 154; *Dewey* v. *Des Moines,* 173 U. S. 193, 199; *Roby* v. *Colehour,* 146 U. S. 153, 159-160.

Furthermore, this Court has on numerous occasions gone to the merits over obstacles unfairly imposed by state law. See e.g., *Rogers* v. *Alabama,* 192 U. S. 226; *Williams* v. *Georgia,* 349 U. S. 375; *Urie* v. *Thompson,* 337 U. S. 163; *Lawrence* v. *State Tax Commission of Mississippi, supra; Broad River Power Company ex rel. Daniel,* 281 U. S. 537; *New York Central* v. *New York and Penn Co.,* 271 U. S. 124; *Ward* v. *Love County,* 253 U. S. 17.

As Mr. Justice Brandeis wrote in *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill,* 281 U. S. 673, 682:

> " * * * while it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement

> of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

Or as stated in *Davis* v. *Wechsler,* 263 U. S. 22, 24:

> "Whatever springes the state may set for those who are endeavoring to assert rights that the state confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."

The basis of the ruling below apparently is that the federal questions raised were not properly reviewable by the Supreme Court of Alabama on petition for writ of certiorari. However, until the instant decision, the scope of review of contempt on certiorari extended to a determination of whether petitioner had been exercising a lawful right, and certiorari was considered an appropriate method for attacking the validity of an unconstitutional order issued by the trial court.[10] Where a state court has frequently dealt with particular issues under a specific procedure, this Court has held that a subsequent refusal to consider those issues under that procedure will not bar review by this Court. *Williams* v. *Georgia,* 349 U. S. 375. This case is presented here in the same posture.

The leading Alabama case on certiorari to review a finding of contempt is *Ex parte Dickens,* 162 Ala. 272, 276, 279, 50 So. 218 (1909), which held that:

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[10] Indeed, in this case itself, on motion for a stay, the Alabama Supreme Court, having before it the same record (except for the second order of contempt), which was before it on petition for writ of certiorari, heard oral argument, denied a stay and issued an order stating that certiorari was an appropriate remedy. 91 So. 2d (Adv. p. 220). And in the first petition for writ of certiorari (3 Div. 773) where the same issues were raised as in the second (3 Div. 779), the ground for the Court's dismissal was not that certiorari was an incorrect method for raising the questions petitioner brings here, but that the averments in the petition were "insufficient." 91 So. 2d (Adv. p. 221).

> "Originally, on certiorari, only the question of jurisdiction was inquired into; but this limit has been removed, and now the court 'examines the law questions involved in the case which may affect its merits.' * * * We think that certiorari is a better remedy than mandamus, because the office of a 'mandamus' is to require the lower court or judge to act, and not 'to correct error or to reverse judicial action,' though it may be issued to enforce a 'clear right' * * *; whereas, in a proceeding by certiorari, errors of law in the judicial action of the lower court may be inquired into and corrected."

On certiorari the Supreme Court of Alabama has decided whether "the record in contempt proceedings discloses a want of jurisdiction or an error of law in holding that to be contempt which in law is no contempt but the exercise of a lawful right * * *." *Ex parte Wheeler, Judge,* 231 Ala. 356, 358, 165 So. 74 (1935). See also *Ex parte Boscowitz,* 84 Ala. 463, 4 So. 279 (1888); *Ex parte Blakey,* 240 Ala. 517, 199 So. 857 (1941); *Ex parte Sellers,* 250 Ala. 87, 33 So. 2d 349 (1948).

In *Ex parte Morris,* 252 Ala. 557, 42 So. 2d 17 (1944), where petitioner had been held in contempt for refusing to produce records of the Ku Klux Klan, the Supreme Court of Alabama on a petition for certiorari, passed upon the issues of privilege, self-incrimination, and whether the inquiry was within the rightful scope of the grand jury's powers. There it was also observed that a contention that First Amendment rights were denied in compelling production of membership lists had not been raised below, but that " * * * nothing in the procedure indicates any conflict with the right of free assemblage guaranteed under the First Amendment * * * ", implying—especially in view of having passed upon kindred questions—that if the issue had been raised below it would be properly within the scope of its review.

The court below stated that the only proper method to review whether petitioner was exercising a lawful right in

refusing to produce its membership lists was mandamus.[11] However, as indicated above, Alabama precedents prior to the decision in this case indicated that certiorari was a normal and clearly appropriate remedy for this purpose, although in certain circumstances mandamus may have been a permissible alternative.[12]

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[11] This ignored the fact that the denial of petitioner's motion to vacate the order to produce and the adjudication of contempt were rendered almost simultaneously.

[12] In the case of Ex parte Hart, 240 Ala. 642, 200 So. 783 (1941), which the Supreme Court of Alabama has cited as authority for the availability of mandamus in the instant case, mandamus was employed to test the validity of a subpoena *duces tecum* issued by the clerk as a ministerial act, and the opinion in justifying the use of mandamus makes much of the fact that the clerk's duty was ministerial. Mandamus has also been held available when the trial court has *denied* a motion to require an answer to interrogatories, because the party proposing the interrogatory has a clear right to an answer. Ex parte Farrell, 234 Ala. 498, 175 So. 277 (1937). However, mandamus has been denied for the purpose of determining the admissibility of the evidence to be procured on such interrogatories when it is alleged for reasons of irrelevancy the interrogatories need not be replied to. Ex parte Farrell, *supra*. In so ruling the court has held that it will not determine the admissibility of evidence piecemeal, and that there is adequate remedy *on appeal*. But in some cases in which the lower court has allowed interrogatories, mandamus has been held proper to inquire whether the evidence sought is patently inadmissible. Ex parte Rice, 258 Ala. 132, 61 So. 2d 7 (1952); Ex parte Driver, 255 Ala. 118, 50 So. 2d 413 (1951); Ex parte Bahakel, 246 Ala. 527, 21 So. 2d 619 (1945). Ex parte Weissinger, 247 Ala. 113, 22 So. 2d 510 (1945), involving mandamus to vacate a decree adjudging that a plea in abatement was not sustained in a divorce action, contains broad language indicating that mandamus will serve to review questions not otherwise reviewable; but in the instant case the clear indication was that certiorari was available. *See* Ex parte Frenkel, 17 Ala. App. 563, 85 So. 878 (1920), in which the court on mandamus on a claim of self-incrimination pretermitted consideration of whether interrogatories could inquire concerning the amount of whiskey defendant had consumed.

Moreover, if mandamus is an appropriate method of review in cases of this kind, the precedents conclusively demonstrate that certiorari was also approved of as a proper method for testing the issues such as these. *See*, e.g., Ex parte Morris, 252 Ala. 557, 42 So. 2d 17 (1944).

Therefore, it is respectfully submitted that the federal constitutional issues in this case are reviewable by this Court, as they were in *Williams* v. *Georgia, supra,* where after reviewing prior state court decisions in Georgia on the question of the use of the extraordinary motion for new trial, contrary to the decision in the case then being considered, this Court held, 349 U. S. at 389:

> "We conclude that the trial court and the State Supreme Court declined to grant Williams' motion though possessed of power to do so under state law. Since his motion was based upon a constitutional objection, and one the validity of which has in principle been sustained here, the discretionary decision to deny the motion does not deprive this Court of jurisdiction to find that the substantive issue is properly before us."

II

In Refusing To Produce The Names and Addresses Of Its Members Petitioner Was Exercising Rights Guaranteed By The Fourteenth Amendment.

In its impact upon petitioner, a non-profit membership corporation, and its Alabama members whom it represents, the order in suit is a serious interference with essential freedom of speech, freedom of assembly, freedom of association, and the right to petition and sue to seek enforcement of this Court's decisions against state enforced racial segregation. It will not be disputed that the courts of Alabama could not constitutionally prohibit such action by Negroes to vindicate their civil rights. Yet, in the special circumstances existing in Alabama, an effective restraint on such action was accomplished by the order to produce the membership lists and the order of contempt for failure to produce.

Compliance with the order to produce the names and addresses of petitioner's members would have subjected the members to reprisals which would prevent them from continuing their activity seeking compliance with the decisions of this Court (R. 9-11). Failure to produce the lists subjected petitioner to a $100,000 penalty and also effectively prevented petitioner, its members and associates from exercising their First Amendment rights in the State of Alabama.[13] No state can constitutionally subject anyone to this dilemma.

In short, petitioner's contention is that the order to produce the membership lists, the judgment of contempt for failure to produce and the refusal of the Supreme Court of Alabama to review such judgment was an unlawful restraint by the State of Alabama of First Amendment rights. This action by the State of Alabama is contrary to applicable decisions of this Court, including *United States* v. *Rumely,* 345 U. S. 41; *Burstyn Inc.* v. *Wilson,* 343 U. S. 495; *Pennekamp and the Miami Herald Publishing Co.* v. *Florida,* 328 U. S. 331; *Thomas* v. *Collins,* 323 U. S. 516; *National Broadcasting Co. Inc.* v. *U. S.,* 319 U. S. 190; *Times-Mirror Co.* v. *Superior Court,* 314 U. S. 252; *Grosjean* v. *American Press Co., Inc.,* 297 U. S. 233; *Pierce* v. *Society of Sisters,* 268 U. S. 510.

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[13] Under the law of Alabama a party adjudged in contempt may not proceed further in the case. Therefore, the *ex parte* preliminary injunction remains in force. Jacoby v. Goetter Weil Co., 74 Ala. 427 (1883).

A. The Order to Produce the Membership Lists Was Made at a Time when Elected Officials and Private Individuals in Alabama Had Demonstrated Their Determination to Thwart All Efforts toward Compliance with This Court's Decisions Invalidating Racial Segregation and to Subject All Who Sought Compliance to Economic Pressures, Mental Harassment, Threats and Violence.

The issues in this case can only be understood when examined in the light of conditions existing in Alabama. In its opposition to the order to produce its membership lists for the State of Alabama petitioner made allegations, supported by the affidavit of its executive secretary, to the effect that there existed such a state-wide atmosphere of hostility to petitioner that the production of the names of petitioner's members in Alabama would subject them to economic reprisals, loss of employment, mental harassment, threatened and actual violence (R. 9-11). In further support of these allegations appearing in the record, petitioner respectfully requests this Court to take judicial notice of the following public information.

In Alabama, elected representatives have used their official power and private individuals have used their collective influence to build up an atmosphere of hostility against anyone who favors the end of racial segregation, especially members of the NAACP. This hostility, beginning almost immediately after the decisions of this Court in the *School Segregation Cases* on May 17, 1954, increased in intensity up to the time of filing of this action. Indeed it continues up to the present time. For example, the Alabama Legislature in January of 1955 adopted a resolution of nullification stating in part: "The legislature of Alabama declares decisions and orders of the Supreme Court of the United States relating to separation of races in the public schools, are, as a matter of right, null, void and of no effect;" [15] and

[15] Acts of Ala. Spec. Sess. 1956, Act 42, at 70.

in February, 1955, in a Special Session of the Alabama Legislature, both houses, unanimously approved a resolution petitioning Congress to limit the jurisdiction of the United States Supreme Court and other federal courts on appeals from state courts.[16]

An Alabama legislative committee set up for the purpose of preserving segregation in public schools made public on October 20, 1954 its first official report calling for the establishment of private schools to preserve segregation. Included in this report was a threat of economic reprisals against anyone who would seek to end racial segregation in public schools. "White employers would be strongly induced to withhold employment from Negro parents who would take advantage of the intended compulsion, leases would likewise be terminated, and trade and commercial relations, now in satisfactory progress, would be affected." [17]

During December, 1954 and January of 1955, five chapters of the White Citizens Council, originating in Mississippi, were organized in Alabama. A spokesman for that organization reported its purpose as follows: "The white population in this country controls the money, and this is an advantage that the council will use in a fight to legally maintain complete segregation of the races. We intend to make it difficult, if not impossible, for any Negro who advocates desegregation to find and hold a job, get credit or renew a mortgage." [18]

On February 2, 1955, 400 members of the White Citizens Council of Dallas County, Alabama were addressed by the leader of the White Citizens Council of Mississippi.[19]

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[16] Southern School News, Vol. I, No. 7, p. 3.
[17] Southern School News, Vol. I, No. 3, p. 2.
[18] Southern School News, Vol. I, No. 5, p. 2.
[19] Southern School News, Vol. I, No. 7, page 3.

During the year 1955 and 1956 White Citizens Council groups in Alabama were addressed by such persons as Circuit Judge Tom P. Brady, of Brookhaven, Mississippi,[20] Governor Herman Talmadge of Georgia,[21] State Senator Sam Engelhardt [22] and U. S. Senator James O. Eastland.[23]

On June 3, 1955 Attorney General Patterson requested the Alabama Legislature to provide additional funds in order to employ four more attorneys for his staff "primarily" to handle segregation suits. He added, "the initial suits" will be the most important and warned "we must be ready to handle them properly * * *." *Montgomery Advertiser*, June 3, 1955, p. 1.

One of the more recent official actions of the State of Alabama was the resolution of the Montgomery City Com-

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[20] On June 22, 1955 Judge Brady told a White Citizens Council in Dallas County that the NAACP "was a willing and ready tool in the hands of Communist front organizations". What the South needs, he is reported to have said, "is an organization as a slingshot to hit between the eyes of that giant monster NAACP" which "is pledged to the mongrelization of the South." Southern School News, Volume II, No. 1, page 2.

[21] Governor Talmadge urged the White Citizens Council members not to hesitate to use economic pressure on those "who would force racial integration on the South." Southern School News, Vol. II, No. 1, page 2.

[22] Senator Engelhardt told a White Citizens Council gathering in Macon County: "The National Association for the Agitation of Colored People forgets there are more ways than one to kill a snake * * * We will have segregation in the public schools of Macon County or there will be no public schools." Southern School News, Volume II, No. 2, page 13.

[23] On February 10, 1956, 10,000 White Citizens Council members in Montgomery, Alabama, heard Senator James O. Eastland urge the retention of segregation at all costs and saying specifically: "You good people of Alabama don't intend to let the NAACP run your schools." Southern School News, Volume II, No. 9, page 7.

mission in response to the order of the U. S. District Court in the case involving enforcement of racial segregation in intrastate transportation.[24] The official resolution stated, in part, "The City Commission * * * will not yield one inch, but will do all in its power to oppose the integration of the Negro race with the white race in Montgomery and will forever stand like a rock against social equality, intermarriage and mixing of the races in the schools. * * * There must continue the separation of the races under God's creation and plan." [25]

A fiery cross was burned on the lawn of United States District Judge Frank M. Johnson who was one of the three judges participating in the decision invalidating segregation in intrastate transportation in Montgomery.[26]

Montgomery and Birmingham, Alabama, have in recent months witnessed untold numbers of threats, intimidation, and actual bombings of homes and churches of Negroes, known to have supported compliance with the decisions of this Court on racial segregation. Hostility against all who seek compliance with the decisions of this Court on the question of the illegality of state-imposed racial segregation continues to the present time. For example, in a column entitled "Off The Bench" appearing in the *Montgomery Advertiser* for March 4, 1957, Judge Walter B. Jones, trial judge in the instant case, stated among other things: "I speak for the White Race, my race," and, "The integrationists and mongrelizers do not deceive any person of common sense with their pious talk

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[24] Browder v. Gayle, 142 F. Supp. 707 (M. D. Ala. 1956), *aff'd*, 1 L. Ed. 2d 114.

[25] Southern School News, Volume III, No. 7, page 15. The members of the City Commission of Montgomery are also members of the White Citizens Council, Southern School News, Volume III, No. 1, p. 10.

[26] Southern School News, Volume III, No. 9, page 13.

of wanting only equal rights and opportunities for other races. Their real and final goal is intermarriage and mongrelization of the American people." The column reviewing the accomplishments of "white" people concludes with the following: "We have all kindly feelings for the world's other races, but we will maintain at any and all sacrifices the purity of our blood strain and race. We shall never submit to the demands of integrationists. The white race shall forever remain white." (See Appendix C, pp. 19a-22a.)

In this atmosphere of public and organized private opinion in Alabama, the surrender of petitioner's membership lists would inevitably lead to serious economic pressure, loss of employment, mental harassment, threatened or actual violence. The fear of unlawful reprisals resulting from release of the membership lists was heightened by the severity and scope of the restraining order,[27] the court's making the production of petitioner's membership lists a prerequisite to a hearing on petitioner's motion to dissolve the restraining order, even though no testimony was contemplated or could have been taken in connection with the latter,[28] and by the punitive and arbitrary nature of the

[27] When petitioner offered to register in its answer, there was no issue before the court warranting a continuation of these proceedings. If petitioner had been doing business in Alabama in violation of Alabama law, there are adequate statutory penalties which could have been imposed. See Title 10, Sections 194, 195, 196, Alabama Code of 1940.

[28] After the *ex parte* temporary injunction had been issued, petitioner on July 2 filed a motion to dissolve the injunction and demurrers to the state's complaint. The motion to dissolve tests the equity in the bill. Corte v. State, 259 Ala. 536, 67 So. 2d 786 (1952). On such motion, oral testimony is not permissible unless objection thereto is waived. See Title 7, Section 1061, Alabama Code of 1940. Herman v. Watt, 233 Ala. 29, 169 So. 704 (1936); Cox v. Lermon, 233 Ala. 58, 169 So. 724 (1936); Hunter v. Parkman, 250 Ala. 312, 34 So. 2d 211 (1948); Riley v. Bradley, 252 Ala. 282, 41 So. 2d 641 (1941); Sheldon v. Sheldon, 238 Ala. 489,

fine imposed as punishment for contempt.[29]

Under the circumstances disclosed, we submit, the surrendering of petitioner's membership lists would inevi-

192 So. 55 (1939). From decision on this motion, appeal lies directly to the Supreme Court of the State. See Title 7, Section 757, Alabama Code of 1940; Francis v. Scott, 260 Ala. 590, 72 So. 2d 93 (1954); Patton v. Robison, 253 Ala. 248, 44 So. 2d 254 (1950); Shiland v. Retail Clerks, Local 1657, 259 Ala. 277, 66 So. 2d 146 (1953).

On July 5, the Attorney General filed a motion for pretrial discovery, reciting that the documents requested were "necessary and material to the trial of said cause and contained evidence pertinent to the issues of said trial." The court so scheduled its hearing dates that hearing on the state's motion and compliance therewith became a prerequisite to a hearing on petitioner's motion to dissolve. Upon adjudging petitioner in contempt, the court terminated all further proceedings in connection with this case on authority of Jacoby v. Goetter Weil & Co., 74 Ala. 427 (1883).

[29] In deciding what penalty to assess for contempt, courts must consider the nature of the defiance, the consequences of the contumacious behavior, the necessity of effectively terminating the defiance in the public interest and the importance of deterring such acts in the future. The court must also consider the defendant's financial resources, the consequent seriousness of the burden to it, and whether the refusal constituted the only avenue by which a claimed constitutional right could be preserved for review by a higher court. United States v. United Mineworkers of America, 330 U. S. 258.

The court failed to consider any of these matters in this case, and there is no evidence in the record or before the court to demonstrate that petitioner's financial resources are such as to make it possible for it to pay a fine of $100,000.00. If the court had considered such evidence, it would discover that petitioner is a nonprofit membership corporation; and that during the 12-month period preceding June 1, 1956, its income from sources in Alabama amounted to only $27,309.46, and its expenditures within the state for the same period amounted to only $21,707.60. A fine of this magnitude in view of petitioner's limited resources is certainly excessive.

Title 13, Section 143, Alabama Code of 1940, limits punishment which a court may impose for criminal contempt to a fine of $50 and imprisonment not exceeding 5 days. There is no limitation as to the punishment which the court may impose for civil contempt.

tably lead to serious economic pressure, loss of employment, harassment, intimidation, threats and actual violence against its members.[30]

B. The Action of the Court Below Constituted an Unconstitutional Encroachment by the State of Alabama upon First Amendment Rights of Petitioner and Its Members.

Petitioner is a non-profit membership corporation organized to secure an end to racial discrimination through peaceful means of persuasion.

In large measure, petitioner has been the collective force through which Negroes and others interested in fighting racial intolerance have pooled their resources toward bringing about nationwide compliance with the Fourteenth

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Under the definition of criminal contempt in Ex parte Hill, 229 Ala. 501, 158 So. 531 (1935), and Ex parte King, 263 Ala. 487, 83 So. 2d 241 (1955), the punishment here imposed, see Appendix B, pages 13a-18a, constitutes criminal contempt and, therefore, should have been held to the statutory limitation. In Ex parte Hill, *supra,* the court said at pages 503, 504: "The question here seems to be dependent upon whether the court made an order as a punishment in the nature of criminal contempt or, on the other hand, sought only to enforce a compliance with its writ of injunction. The decree of the court settles that question. It is declared to be punishment for what has been done, and it committed petitioner to jail for a definite period of time." *Compare* the decision in Ex parte Hill *with* the decision in the case at bar.

[30] Fear engendered by such compliance would have destroyed petitioner as an organization even more effectively than the court's order. Consequently, under the circumstances of this case, the disclosure ordered was so unreasonable and arbitrary as to constitute a denial of due process. *See* Oklahoma Press Publishing Co. v. Walling, 327 U. S. 186; Boyd v. United States, 116 U. S. 616; Hale v. Henkel, 201 U. S. 43; Federal Trade Commission v. American Tobacco Co., 264 U. S. 298; United States v. Morton Salt Co., 338 U. S. 632. Disobedience, therefore, could not subject petitioner to contempt.

Amendment.[31] Through petitioner and its affiliates Negroes have sought judicial relief from disenfranchisement because of race, educational discrimination and segregation on public carriers. As an organization through which Americans collectively act to secure rights guaranteed by the Constitution of the United States, petitioner and its members have a constitutional protection against onerous state sanctions which would restrict such activity and deny rights incident thereto. See *Thomas* v. *Collins,* 323 U. S. 516; *De Jonge* v. *Oregon,* 299 U. S. 353.

By means of speeches, pamphlets, public meetings, petitions and other means of communication, petitioner seeks to prepare Negroes and others "for an intelligent exercise of their rights as citizens" and to create an "informed public opinion" concerning these rights. These rights are protected from interference by the states. *Grosjean* v. *American Press Co., Inc.,* 297 U. S. 233, 249-250.

The part of the order to produce to which petitioner objected was that which required petitioner to disclose the names and addresses of its Alabama members. Petitioner objected to identifying these members on the ground that to do so, in the special circumstances of this case, would constitute an unwarranted interference with rights secured to petitioner and its members by the First Amendment and protected from state encroachment by the Fourteenth Amendment.

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[31] See R. 5-6; "Private Attorneys-General: Group Action in the Fight for Civil Liberties," 58 Yale L. J. 574 (1949); Ashmore, The Negro and the Schools 30, 35, 38, 73, 97, 124, 131 (1954); Williams and Ryan, Schools in Transition 38-39, 52, 55, 60, 71, 73, 79, 92, 96-106, 127, 130, 137, 139, 161, 179, 182, 202, 222, 224 (1954); Woodward, The Strange Career of Jim Crow 110-111 (1955); Rose, The Negro in America 242, 259, 263-267 (1956 ed.); Robison, "Organizations Promoting Civil Rights and Liberties", 275 Annals 18, 20 (1951).

Disclosure of the names and addresses of petitioner's members, in view of the members' well-founded fear of exposure to economic and physical reprisals, would inhibit members from speaking, writing, petitioning, or assembling to end racial discrimination as individuals and would also seriously inhibit their right of association, to combine in and join petitioner so that the organization might represent them through the same means of expression. Moreover, the resulting decrease in petitioner's present and potential membership would destroy petitioner's right to exist as an organization for the purposes set out in its charter and to effectively exercise rights of free expression to secure for its members and Negro-Americans in general the equality before the law which the Constitution and this Court accord them.

It is clear that the state of Alabama could not by direct action prohibit petitioner and its members from exercising their rights of free expression although that expression may be contrary to majority opinion. *Kunz* v. *N. Y.*, 340 U. S. 290; *Niemotko* v. *Maryland*, 340 U. S. 268; *De Jonge* v. *Oregon*, 299 U. S. 353.

There can be no doubt that First Amendment rights are protected by the Fourteenth Amendment not only from direct prohibitions upon their exercise by the state but also from the state's "indirect discouragements," *American Communications Assn.* v. *Douds*, 339 U. S. 382, 402, which take the form of taxes, *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Grosjean* v. *American Press Co.*, 297 U. S. 233, licenses, *Burstyn* v. *Wilson*, 343 U. S. 495; *Kunz* v. *N. Y.*, 340 U. S. 290; *Lovell* v. *City of Griffin*, 303 U. S. 444, conditions upon which privileges are granted, *Wieman* v. *Updegraff*, 344 U. S. 183, or the requirements of public disclosures as to political associations, *United States* v. *Rumely*, 345 U. S. 41, 46; *Thomas* v. *Collins*, 323 U. S. 516; 538-540; cf. *United States* v. *Harriss*, 347 U. S. 612.

Further, it seems clear that the concept of free speech must necessarily include the right of individuals to "pool their capital, their interests or their activities under a name and form that will identify collective interests," *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 187, (concurring opinion) in the form of a corporation or association in order to more effectively secure enjoyment of liberties guaranteed by the Constitution. Where, as here, such collective activity takes place, the state may not impose sanctions against the corporation or association which result in denying to it and its members rights of free speech and assembly. Cf. *Thomas* v. *Collins*, 323 U. S. 516; *Beauharnais* v. *Illinois*, 343 U. S. 250, 262-263.[32]

If the right to freedom of speech and assembly does not include the right of individuals to join together and lawfully express a united opposition to state abridgement of rights, then the future of our democratic form of government is in serious jeopardy.

> "The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative processes. They could hardly go on without it. Moreover, to an extent not necessary now to attempt delimiting, that right is secured by the guaranty of freedom of assembly, a liberty essentially coordinate with the freedoms of speech, the press, and conscience. . . . It is not by accident, it is by explicit design, as was said in Thomas v. Collins, . . . that these freedoms are coupled together in the First Amendment's assurance. They involve the right to hear as well as to speak, and any restriction upon either attenuates both." (United States v. C. I. O., 335 U. S. 106, 143-144 (concurring opinion).

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[32] See also comment, "State Control Over Political Organizations: First Amendment Checks on Powers of Regulation," 66 Yale L. J. 545 (1957).

While, under some circumstances, a "secret oath bound" organization dedicated to unconstitutional purposes and engaging in illegal activities may be "proscribed" by requiring it to give up its membership list, *New York ex rel. Bryant* v. *Zimmerman,* 278 U. S. 63, a corporation such as petitioner, well-known as the chief organization combating governmentally-enforced racial discrimination through peaceful and legitimate means, is entitled to protection against "arbitrary, unreasonable and unlawful interference with . . . [its] patrons," *Pierce* v. *Society of Sisters,* 268 U. S. 510, 535-536; see *Truax* v. *Raich,* 239 U. S. 33, and, as in the special circumstances of this case, such a corporation must be entitled to protect itself against abridgements of its speech, free assembly and the right to petition the government.

This Court has recognized the right of "communication corporations" to free speech and press protection. *Grosjean* v. *American Press Co., Inc.,* 297 U. S. 233; *Times-Mirror Co.* v. *Superior Court,* 314 U. S. 252; *Pennekamp and the Miami Herald Publishing Co.* v. *Florida,* 328 U. S. 331 (newspaper corporations); *National Broadcasting Co., Inc.* v. *U. S.,* 319 U. S. 190 (radio corporations); *Burstyn Inc.* v. *Wilson,* 343 U. S. 495 (motion picture distributor corporation).

Although not all corporations may exercise rights of free speech, the above-cited decisions demonstrate the constitutional protection of free expression on the part of various corporations engaged in the dissemination of information and "free trade in ideas" vital to a self-governing society.[33] Petitioner's purposes and activities are in this respect identical with those of newspapers, radio sta-

[33] In Burstyn Inc. v. Wilson, 343 U. S. 495, 501, the Court considered irrelevant the fact that motion picture "production, distribution, and exhibition is a large-scale business conducted for private profit."

tions, and motion pictures and, therefore, it is entitled to constitutional protection of free speech.

Moreover, decisions of this Court indicate that petitioner is also in a position to assert its members' rights to free speech and assembly in the instant case. In *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233, 249-250, 280, this Court held the licensing tax violated the general public's right to "the circulation of information" and to "free and general discussion of public matters" as well as the newspaper corporation's rights. Similarly, in *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534-535, this Court held that a compulsory public school statute violated not only the private-school corporations' rights but also "the liberty of parents and guardians." Cf. *Barrows* v. *Jackson*, 346 U. S. 249; *Brewer* v. *Hoxie School District*, 238 F. 2d 91, 105 (8th Cir. 1956). " '[T]he domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states' . . . no doubt includes liberty of thought and appropriate means for expressing it . . .", *Hughes* v. *Superior Court of California*, 339 U. S. 460, 464. States are therefore prohibited from taking any action which amounts to a prior restraint on the right of freedom of speech and freedom of the press. *Near* v. *Minnesota*, 283 U. S. 697.

In the instant case, petitioner is the only one who is in a position to assert the constitutional rights of its members. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 154, 159, 186-187 (concurring opinions); *International News Service* v. *Associated Press*, 248 U. S. 215, 233. No individual member could challenge the order to produce, assuming the procedural possibility of such action, without disclosing his membership and subjecting himself to economic and physical reprisals resulting in a denial of his rights to free speech and association—the very

reprisals which constitute the basis for refusal to disclose the names and addresses required by the Court's order to produce (R. 8-10).

Under the circumstances of this case, and the applicable decisions of this Court it is apparent that in refusing to produce its membership lists petitioner was exercising constitutionally protected rights.

III

The Rights Asserted By Petitioner And Denied By The Courts Below Are Of Great General Importance Which It Is In The Public Interest To Have Decided By This Court.

The questions involved in this case are perhaps the most important Fourteenth Amendment questions presented to this Court in the wake of the *School Segregation Cases*. For, if the proceedings below are valid, compliance with these decisions and cognate cases may be effectively evaded in other states as well as in Alabama.

While progress has been made in nine of the southern states toward the ending of segregation in public education, the remaining eight southern states, including Alabama, have pursued a statewide policy of preventing compliance with the principles established in the *Brown* case. Indeed, five of these eight states, including Alabama, still deny their Negro citizens admission to their state universities.[34]

Negro Americans in these states are for many reasons unable to exercise their individual rights of freedom of

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[34] Johnson, "Racial Integration in Southern Higher Education," 34 Social Forces 309-12 (1956).

speech and assembly or to combine to effectively exert political pressure to bring about a change in the status quo. The only effective relief has been through legal action in the courts. Consequently, the entire panoply of state power has been invoked for the purpose of insulating state policies of racial segregation against successful attack in the courts.

State legislatures in addition to Alabama's have not only adopted resolutions of "nullification" and "interposition,"[35] but have implemented this by adopting other measures, seeking to circumvent the decisions of this Court and to continue segregation in public education.[36] All of these measures are of questionable constitutionality,

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[35] Senate Concurrent Resolution No. 17-XX, Special Session, 1956, of the Florida Legislature, 1 Race Rel. L. Rep. 948 (1956); House Resolution No. 185, Regular Session, 1956, of the Georgia General Assembly, 1 Race Rel. L. Rep. 438 (1956); House Concurrent Resolution No. 10, Regular Session, 1956, of the Louisiana Legislature, 1 Race Rel. L. Rep. 753 (1956); Senate Concurrent Resolution No. 125, Regular Session, 1956, of the Mississippi Legislature, 1 Race Rel. L. Rep. 440 (1956); Act of February 14, 1956, Calendar No. S. 514, of the South Carolina Legislature, 1 Race Rel. L. Rep. 443 (1956); Senate Joint Resolution No. 3, 1956 Session of the Virginia Legislature, 1 Race Rel. L. Rep. 445 (1956).

[36] *Florida*: Ch. 29746 (1955), 1 Race Rel. L. Rep. 237 (1956); Chs. 31380, 31389, 31390, 31391 (1956), 1 Race Rel. L. Rep. 924, 954, 955, 940 (1956).

Georgia: Appropriation Act §§ 7-8, Acts 11, 12, 13, 15, 197 (1956), 1 Race Rel. L. Rep. 421, 418, 426, 420, 424, 450 (1956).

Louisiana: Const. Art. XII, § 1, La. R. S. 17:331-334, La. R. S. 17.81.1, 1 Race Rel. L. Rep. 239 (1956), *held* unconstitutional in Bush v. Orleans Parish School Board, 138 F. Supp. 336, 337 (E. D. La. 1956), motion for leave to file petition for writ of mandamus denied, 351 U. S. 948 (1956), aff'd — F. 2d — (5th Cir., decided March 1, 1957); La. R. S. 17:2131-2135, La. R. S. 17:443, 1 Race

but they will remain in force unless challenged by public protest and litigation too expensive for the average Negro to finance alone.[37]

Yet Negro Americans' only effective redress lies in such litigation, in the free exercise of the ballot, and freedom of speech and assembly. Only through joint and concerted exercise of these rights can a weak and unpopular minority

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Rel. L. Rep. 730, 941 (1956) now being challenged as unconstitutional in three consolidated suits, Ludley v. Board of Supervisors of L. S. U. and Agricultural and Mechanical College, etc. (Civil Actions No. 1833, 1836, 1837, E. D. La., 1956); Acts 28, 248, 250, 252, Senate Bill 350, Const. Art. XIX, § 26, 1 Race Rel. L. Rep. 728, 943, 944, 942, 927, 776 (1956); House Concurrent Resolution No. 9, 1956 Session, 1 Race Rel. L. Rep. 755 (1956).

Mississippi: House Concurrent Resolution No. 21, Regular Session 1956, 1 Race Rel. L. Rep. 423 (1956); Proposed House Bill No. 30, Regular Session, 1956 (vetoed by Governor), 1 Race Rel. L. Rep. 448 (1956); House Bills No. 31, 119, 880 (1956), 1 Race Rel. L. Rep. 422, 449, 592 (1956).

North Carolina: Chs. 1-7, 1956 Extra Session, 1 Race Rel. L. Rep. 928-940 (1956); Act 336, 1955, 1 Race Rel. L. Rep. 240 (1956), see Carson v. Board of Education of McDowell County, 227 F. 2d 789 (4th Cir. 1955) and Carson v. Warlick, 238 F. 2d 724 (4th Cir., 1956).

South Carolina: Act 329 (1955), 1 Race Rel. L. Rep. 241 (1956), Acts 662, 676, 677, 712, 813 § 3 (1956), 1 Race Rel. L. Rep. 586, 588, 730, 731 (1956).

Virginia: Ch. 70, Extra Session 1956, 1 Race Rel. L. Rep. 1109 (1956) *held* unconstitutional in Adkins v. The School Board of the City of Newport News, — F. Supp. — (E. D. Va., decided January 11, 1957); Chs. 56-71 (1956), 1 Race Rel. L. Rep. 1091-1111 (1956).

See also laws and cases cited in footnote 20.

[37] For a detailed analysis of the need for organized efforts and support in this field see "Private Attorneys-General: Group Action in the Fight for Civil Liberties," 58 Yale L. J. 574 (1949).

succeed in securing equality before the law.[38] This joint and concerted action has taken place largely under petitioner's aegis.

The pattern is clear—either by legislative or judicial act to seek to prevent petitioner and its members from continuing its activities,[39] with the expectation that such state action will effectively frustrate efforts of citizens of the state to seek full compliance with the law as declared by this Court.

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[38] See United States v. Carolene Products Co., 304 U. S. 144, 152 note 4, where Mr. Chief Justice (then Mr. Justice) Stone said: "Nor need we inquire whether similar considerations enter into the review of statutes directed at particular religions, * * * or national * * * or racial minorities * * * whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

[39] *Georgia*: Williams v. National Association for the Advancement of Colored People, Inc., unreported, No. A-58654 (Sup. Ct. Fulton County).

Louisiana: Louisiana ex rel. LeBlanc v. Lewis, unreported, No. 55899 (D. C., 19th Jud. Dist.), app. dismissed *sub nom.* Louisiana ex rel. Gremillion v. National Association for the Advancement of Colored People, Inc., unreported (La. App. First Cir.) "since the cause was removed to the United States District Court, Eastern District of Louisiana, on March 28, 1956 [No. 1678] * * *," 1 Race Rel. L. Rep. 571, 576 (1956).

Mississippi: House Bill No. 33, Regular Session 1956, 1 Race Rel. L. Rep. 451 (1956).

South Carolina: Act No. 741, 1956, 1 Race Rel. L. Rep. 751 (1956).

Texas: Texas v. National Association for the Advancement of Colored People, Inc. (and National Association for the Advancement of Colored People Legal Defense and Educational Fund, Inc.), pending No. 56-649 (D. C. 7th Jud. Dist.), 1 Race Rel. L. Rep. 1068 (1956).

Virginia: Chs. 31-37, Extra Session 1956; Ordinance adopted by Board of Supervisors of Halifax County, August 6, 1956, 1 Race Rel. L. Rep. 958 (1956).

This case does not merely present an abstract issue of whether disobedience of an order requiring a foreign corporation to disclose the names and addresses of its members to the state may properly be punished by contempt. The crucial question is whether a state may deprive a group of its citizens of the right to collectively seek the attainment of full citizenship status as guaranteed by the Constitution and the decisions of this Court. Moreover, if the state is free to utilize the method here employed to suppress support for a federal right in conflict with a state policy of racial discrimination, it can employ this method to enforce statewide conformity in other areas. Moreover, there is no doubt that similar procedures will be followed by courts in other states. "Compulsory unification of opinion achieves only the unanimity of the graveyard." *West Virginia State Bd. of Education* v. *Barnette,* 319 U. S. 624, 641.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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> "A 'civil contempt' consists in failing to do something ordered to be done by a court in a civil action, for the benefit of the opposing party therein."—162 Ala. 276.

The distinction between civil and criminal contempts is thus stated in 12 Am. Jur., Contempt, § 6, p. 392:

> "Criminal contempt proceedings are those brought to preserve the power and vindicate the dignity of the court and to punish for disobedience of its orders. Civil contempt proceedings are those instituted to preserve and enforce the rights of private parties to suits and to compel obedience to orders and decrees made for the benefit of such parties. The former are criminal and punitive in their nature, and the goverment, the courts, and the people are interested in their prosecution. The latter are civil, remedial, and coercive in their nature, and the parties chiefly interested in their conduct and prosecution are those individuals for the enforcement of whose private rights and remedies the suits were instituted."

Criminal and civil contempts are defined in 17 C. J. S., Contempt, §§ 5 and 6, pp. 7, 8, to be as follows:

> "A criminal contempt is conduct that is directed against the dignity and authority of the court, or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect.
>
> * * *
>
> "Civil contempt consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein, and is,

> therefore, an offense against the party in whose behalf the violated order is made. If, however, the contempt consists in doing a forbidden act, injurious to the opposite party, the contempt may be considered criminal.''

We indicated our approval of both of the above quotations in *Ex parte King,* 263 Ala. 487, 491, 83 So. 2d 241, 245.

We held the contempt to be criminal in the *King* case at page 490 because it was "' * * * punishment for what has been done, and it committed petitioner to jail for a definite period of time.' " We further stated at page 491, "It seems to us that the penalty is for past disobedience rather than to compel obedience."—*Ex parte King, supra.*

We also held the contempt to be criminal in *Ex Parte Hill,* 229 Ala. 501, 158 So. 531, for the same reasons.

The petitioner insists that its contempt was criminal because the trial court used the word punishment in the decree. The Supreme Court in *United States* v. *United Mine Workers of America,* 330 U. S. 258, 297 n. 64, 67 S. Ct. 677, 91 L. Ed. 884, speaking of the use of the word punishment as indicating the type of contempt said: "'punishment' has been said to be the magic word indicating a proceeding in criminal, rather than civil contempt. * * * But 'punishment' as used in contempt cases is ambiguous. 'It is not the fact of punishment but rather its character and purpose . . .'—*Gompers* v. *Bucks Stove & Range Co.,* 221 U. S. 418, 441 (1941)." There were two fines in the *United Mine Workers of America* case. The fine assessed for past contumacy was held to be for criminal contempt; and the fine to coerce the union into future compliance with the court's order was held to be for civil contempt.

In the light of these principles it is clear to us that the fines in the instant case were for civil contempt. The decree adjudging the $10,000.00 fine said:

> "Ordered, adjudged and decreed further that in the event the respondent fully complies with the court's order to produce within five days from this date, then *it may move to have this fine reduced or set aside.* However, in the event the respondent fails to comply fully with the order to produce within five days from this date, then it is ordered, adjudged and decreed that the fine for this contempt be $100,000.00." (Emph. sup.)

The $10,000.00 fine was coercive because it gave the petitioner a right to have the fine set aside after full compliance with the order to produce. The $100,000.00 fine was coercive because the petitioner had five days within which to comply with the court's order or to be fined said amount. Neither fine apparently was severe enough or the petitioner would have produced the documents within the time allowed instead of offering partial compliance with the court's order on the last day of grace.

The time given the petitioner in the instant case prior to assessing the larger fine was the same time given the union by the Supreme Court of the United States in modifying the civil contempt fine in the *United Mine Workers of America* case, *supra.* We quote from page 305:

> " * * * to pay a fine of $700,000, and further to pay an additional fine of $2,800,000 unless the defendant union, *within five days* after the issuance of the mandate herein, shows that it has fully complied * * * " (Emph. sup.)

Our statutes limit punishment for contempt by the circuit court to five days in jail and a fine of fifty dollars.—Title 13, §§ 9 and 143, Code of 1940. But our cases hold that the statutory limitations apply to criminal contempt and not to civil contempt.—*Ex parte King, supra; Ex parte Hill, supra; Ex parte Dickens,* 162 Ala. 272, 50 So. 218.

The amount of the fine in the instant case, not being limited by statute, is within the sound discretion of the court and in the absence of an abuse thereof will not be disturbed.—*MacInnis* v. *United States*, C. A. Cal. 191 F. 2d 157, 342 U. S. 953, 96 L. Ed. 708, cert. denied 72 S. Ct. 628; *United States* v. *Landes*, C. C. A. N. Y., 97 F. 2d 378; *Ex parte Hill, supra.* The fine adjudged by the circuit court is not excessive.

We could well conclude here by ordering a denial of the writ and a dismissal of the petition, but will discuss briefly the merits of the order to produce so that the parties may know the views entertained by the court.

The petitioner argues that its belated offer to produce included everything except items number 2 and 8 as set out in its brief, and that it was not required to produce these. Items 2 and 8 are:

> "2. All lists, documents, books, and papers, addresses and dues paid of all present members in the State of Alabama of the National Association for the Advancement of Colored People, Incorporated.
>
> * * *
>
> "8. All lists, books, and papers showing the names and addresses of all officers, agents, servants and employees in the State of Alabama of the National Association for the Advancement of Colored People, Inc."

Assuming that the petitioner did offer to bring in for inspection by the State everything except the documents listed in items 2 and 8, could the court require the petitioner to disclose this information? We think so. The court held the information to be competent and relevant; and the petition shows that the court had jurisdiction of the petitioner and of the subject matter.

Appendix A

This court in holding that an officer of the Ku Klux Klan, Inc. was in contempt of court for failing to turn over a list of members of said organization when ordered to do so by the court, said:

> "The first duty of every citizen is allegiance to the constitution and laws of the state and nation and the lawful judgments and decrees of the courts . . . Only privileged communications and facts made so by the law or lawful government regulations are protected from disclosure. The identity of the membership of said organization does not fall within such privileged class."—*Ex parte Morris,* 252 Ala. 551, 554; 42 So. 2d 17.

The Supreme Court of the United States recently upheld a contempt citation of a labor union official, for his failure to produce before a grand jury, union records "showing its collections of work-permit fees, including the amounts paid therefor and the *identity of the payors* . . ." (Emp. sup.). The court said at page 705:

> "The union and its officers acting in their official capacity lack the privilege at all times of insulating the union's books and records against reasonable demands of governmental authorities."—*United States* v. *White,* 322 U. S. 694, 64 S. Ct. 1248, 88 L. Ed. 1542.

The courts, when their jurisdiction is duly invoked, have authority to exercise visitatorial powers and inquire as to the acts of such corporations as the petitioner and keep them within the bounds of their lawful authority.—*Essgee Co. of China* v. *United States,* 262 U. S. 151, 43 S. Ct. 514, 67 L. Ed. 917; *In re Verser-Clay Co.,* 10 Cir., 98 F. 2d 859, 120 A. L. R. 1098; *Wilson* v. *United States,* 221 U. S. 361, 31 S. Ct. 538, 55 L. Ed. 771, Ann. Cas. 1912 D, 558; *Ex parte Morris, supra.*

Appendix A

The guaranties found in the Federal and State Constitutions against compulsory self-incrimination do not extend to a private corporation so as to justify it in refusing, on the ground that it might be thereby incriminated, to comply with a lawful order directing it to produce corporate records in legal proceedings.—*United States* v. *White,* 322 U. S. 694, 64 S. Ct. 1248, 88 L. Ed. 1542; *Wilson* v. *United States, supra; Hale* v. *Henkel,* 201 U. S. 43, 26 S. Ct. 370, 50 L. Ed. 652; *United States* v. *Lawn,* S. D. N. Y., 115 F. Supp. 674.

It is clear, therefore, that the circuit court, in equity, had authority to order the petitioner to disclose names, addresses and dues paid by petitioner's members, officers, agents and employees and that the petitioner could be held in contempt of court for non-compliance with the court's order to produce.

Writ denied and petition dismissed.

All the Justices concur.

Judgment of the Court

Comes the Petitioner, National Association For The Advancement of Colored People, a Corporation, by Attorneys, and the Petition for a Writ of Certiorari to the Circuit Court of Montgomery County, In Equity, being submitted on briefs and duly examined and understood by the Court,

IT IS CONSIDERED AND ORDERED that a Writ of Certiorari to *Montgomery Circuit Court, in Equity,* be and the same is hereby denied, and that the Petition be and the same is hereby dismissed at the cost of the Petitioner, National Association For The Advancement of Colored People, a Corporation, for which costs let execution issue accordingly.

APPENDIX B

Orders and Decrees of the Circuit Court

DECREE FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION

This cause, being submitted to the Court upon application of the complainant duly verified as required by law for a temporary restraining order and injunction as prayed for in the original complaint filed in this cause and upon consideration thereof and of the evidence offered in support thereof in the form of sworn petition and exhibits attached thereto, and the State not having elected to give bond, the Court is of the opinion same should be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED by the Court that the respondent, its agents, servants, employees, attorneys, and all officers thereof and all persons in active concert or participation with respondent, and all persons having notice of this order be, and they hereby are, restrained and enjoined until further orders of the Court from:

1. Conducting any further business of any description or kind or respondent within the State of Alabama; organizing further chapters of respondent within the State of Alabama; maintaining any offices of respondent within the State of Alabama.

2. Soliciting membership in respondent corporation or any local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

3. Soliciting contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

4. Collecting membership dues or contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

5. Filing with the Department of Revenue and the Secretary of State of the State of Alabama any application, paper or document for the purpose of qualifying to do business within the State of Alabama.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Sheriff of Montgomery County, Alabama, or any other lawful officer of the State of Alabama, serve a copy of the petition and this order upon the respondent by service thereof upon any officer, agent or servant of respondent found within the State of Alabama.

Done at Montgomery, Alabama, this the 1st day of June, 1956.

s/ WALTER B. JONES,
Circuit Judge.

EXHIBIT II

INTERLOCUTORY DECREE ON MOTION OF THE STATE TO REQUIRE RESPONDENT TO PRODUCE CERTAIN BOOKS, PAPERS AND DOCUMENTS

The present suit was initiated by the State of Alabama filing an original bill having for its purpose among other things the issuance of a temporary injunction restraining the Respondent from further conducting its business within the State of Alabama; and praying on final hearing that the Respondent be permanently enjoined from conducting any business within the State of Alabama and that the Respondent be enjoined from organizing or controlling any

chapters and from exercising any of its corporate functions within the State of Alabama.

In accordance with the prayer of the bill, a temporary restraining order was issued on June 1st, 1956, and on July 5th the Complainant filed its motion to produce and same was duly set for hearing on July 9th, 1956. Then on June 26, 1956, the Respondent filed its motion to dissolve the temporary injunction and also demurrers to the bill, which were duty set for hearing on July 17, 1956; but the matter is now before the Court and is submitted on the motion to produce filed by the State. A hearing has been had on this motion to produce at which time the same was argued to the Court by the Attorney General and Counsel for the State, and by Counsel for the Respondent.

In support of the State's motion to produce, the Attorney General offered the sworn original bill, the sworn motion to produce, and the answer of the Respondent in its motion to dissolve the temporary restraining order.

It is the contention of the Respondent that the motion to produce is premature, that the motion should not be ruled upon until the demurrer to the bill has been passed upon, and the Attorney for the Respondent makes the contention that the motion to produce is in the nature of discovery by the State in aid of a penalty or forfeiture against the Respondent, and Respondent argues that a Court of Equity will not grant discovery in aid of a penalty or forfeiture.

The State, on the other hand, contends that its bill is one for discovery and relief in aid of a public purpose, and that under a motion to produce the Respondent may be compelled to present any papers, books, or documents relating to matters within the exclusive knowledge of the Respondent. The State also insists that, aside from any statute, a Court of Equity has inherent power to compel the production of original documents for evidential pur-

poses. This is settled law in Alabama, and this right, as our Supreme Court has frequently said, is a right given under the inherent power of a Court of Equity to compel the production of books and documents when it is shown that such production is indispensable to the doing of justice as auxiliary to any proper relief.

The Court is of opinion that the points urged by the Respondent are not well taken, and that, to the extent hereinafter indicated the Respondent should produce on or before 10:00 a.m., Monday, July 16, 1956, in the office of the Register of the Court, for the inspection of the State of Alabama, the records hereinafter named. It is, therefore,

ORDERED, ADJUDGED, and DECREED by the Court that Respondent on or before the above-named date and at the above-named place, do produce all of the books, papers or documents described in paragraphs 1, 2, 4, 5, 6, 7, 8, 11 and 14 of the Motion to Produce.

All other questions reserved.

Done at Montgomery, Alabama, this July 11, 1956.

(Signed) WALTER B. JONES
Circuit Judge

DECREE ADJUDGING RESPONDENT IN CONTEMPT AND FIXING PUNISHMENT THEREFOR

This suit seeks to enjoin among other things, the respondent, from further conducting its business within the State of Alabama, seeks the dissolution of all its chapters in the State, and asks that on final hearing an order of ouster be entered against the respondent. Due and proper service of the bill has been had upon the respondent, and through its attorneys it has entered an unqualified appearance in the cause. A temporary restraining order was issued upon the

filing of the bill. Later the State filed a motion to require respondent to produce certain books, documents and papers. This was duly set down for hearing before the court. At that time counsel for respondent objected to the motion to produce and the court ruled, as shown by its order on file, that certain books, papers and documents mentioned in the motion to produce should be brought into court, and a time was fixed for the production of the evidence requested by the State. Later the respondent moved the court to set aside the order to produce, assigning in substance that it had filed a full and complete answer, that the information called for by the State was already known to the Attorney General and that the books and papers were not now material or necessary to the trial and determination of the issue raised in the suit.

The motion to set aside the order to produce has been argued at length before the court by the Attorney General and by counsel for the respondent, and the respondent has offered oral testimony on the motion to set aside. Several hours have been consumed in hearing the matter in open court. The grounds of the motion to vacate are not well taken.

Upon the denial by the court of the motion to set aside the order to produce, the court offered respondent additional time to produce the documents heretofore ordered produced. Counsel for respondent stated in open court that additional time would not be required, that respondent would not produce the books, documents and papers as ordered by the court and that it elected to stand on its decision not to bring the papers into court for the inspection of the State.

The action of the respondent without question puts it in contempt of court, and its counsel practically concede this. So the respondent is in willful contempt of the court, and the only matter before the court at this time is a formal

order adjudging respondent in contempt and in taking judicial sanctions against it for its contempt.

The court adjudges and decrees that the respondent is in willful contempt in failing to obey the order of the court to produce for inspection the documents referred to in the order to produce. This brings up now for the consideration of the court what punishment should be decreed against the respondent. Before fixing that punishment these general principles of equity may be stated: The purpose of punishing for a contempt is to vindicate the dignity and authority of the court from the disrespect shown to its orders, to aid in compelling the performance of the court's order, performance which is confessedly in the power of the respondent at this time, and which performance respondent's counsel state will not be given. In the present contempt proceeding the court must consider the character and magnitude of the harm threatened by respondent's continued contumacy and the probable effectiveness of the sanction invoked.

Under the law, there is no way by which a corporation can be jailed or imprisoned, so a fine must be imposed, and in the imposition of this fine the presiding judge may properly consider the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating respondent's defiance as required by the public interest, and the importance of determining such acts in the future. The extent of the punishment is discretionary with the court.

The present willful and deliberate, and considered, defiance of the court's order is not to be lightly taken. It is not such an act which admits of any but severe punishment. The court can not permit its orders to be flouted. It cannot permit a party, however wealthy and influential, to take the law in his own hands, set himself up above the law, and

contumaciously decline to obey the orders of a duly constituted court made under the law of the land and in the exercise of an admitted and ancient jurisdiction. If this were allowed there would be no government of law, only the government in a particular case of the litigant who elected to defy the court for his own private and selfish ends. The respondent in this case has elected to stand on its brazen defiance of the order of a court with full power and authority to issue the order against it. Respondent having made its election to defy the court must abide the consequences of its stand. Upon a full consideration of the record in this case, it is

Ordered, adjudged and decreed by the court that National Association for the Advancement of Colored People is in contempt of court for its willful and deliberate refusal to produce the documents described in the former order of the court in this cause.

Ordered, adjudged and decreed further by the court that as punishment for its said contempt the said National Association for the Advancement of Colored People be and it is hereby fined the sum of Ten Thousand Dollars, and judgment is hereby rendered against the said respondent and in favor of the State of Alabama for said sum of Ten Thousand Dollars, for which let execution issue.

Ordered, adjudged and decreed further that in the event the respondent fully complies with the court's order to produce within five days from this date, then it may move to have this fine reduced or set aside. However, in the event the respondent fails to comply fully with the order to produce within five days from this date, then it is ordered, adjudged and decreed that the fine for this contempt be $100,000.00.

Appendix B

Let the costs in this matter, to be taxed by the Register, be paid by the said National Association for the Advancement of Colored People.

Done in open court in the presence of the counsel for the parties to this suit on this July 25, 1956.

/s/ WALTER B. JONES
Circuit Judge, Presiding

DECREE ADJUDGING RESPONDENT IN FURTHER CONTEMPT AND FIXING PUNISHMENT THEREFOR

This Court, having by decree, dated July 25, 1956, ordered, adjudged and decreed respondent, National Association for the Advancement of Colored People, in contempt of Court for its willful and deliberate refusal to produce the documents described in the former order of the Court in this cause, dated July 11, 1956, and having further ordered, adjudged and decreed that as punishment for said contempt the said National Association for the Advancement of Colored People, be fined the sum of $10,000.00, and judgment rendered against the said respondent in favor of the State of Alabama for the sum of $10,000.00, and having further ordered, adjudged and decreed that in the event respondent fully complied with the Court's order to produce within five days from July 25, 1956, that it might move to have its fine reduced or set aside, but in the event the respondent failed to comply fully with the order to produce within five days from July 25, 1956, it was ordered, adjudged and decreed that the fine for this contempt be $100,000.00.

And the respondent, National Association for the Advancement of Colored People, having failed to comply

with this order and not having produced the documents described in the former order of the Court in this cause by midnight, July 30, 1956, IT IS;

ORDERED, ADJUDGED AND DECREED by the Court that the National Association for the Advancement of Colored People, is in contempt of this Court for its willful and deliberate refusal to produce the documents described in the former order of the Court in this cause by midnight, July 30, 1956.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that as punishment for its said contempt the said National Association for the Advancement of Colored People, be and it is hereby fined the sum of $100,000.00, and judgment is hereby rendered against the said respondent and in favor of the State of Alabama for said sum of $100,000.00, for which let execution issue.

That the costs in this matter to be taxed by the Register be paid by the said National Association for the Advancement of Colored People.

Done in Montgomery, Alabama, on this the 31st day of July 1956.

/s/ Walter B. Jones
CIRCUIT JUDGE, PRESIDING

APPENDIX C

THE MONTGOMERY ADVERTISER
Monday, March 4, 1957

OFF THE BENCH

By Judge Walter B. Jones

I Speak For The White Race

Sen. Carmack of Tennessee in 1925 made a speech in the U. S. Senate in defense of the South which was then, as now, under vicious attack. He began his address by saying: "I speak, Sir, for my native state, for my native South."

Today I paraphrase the senator's words by saying: "I speak for the White Race, my race," because today it is being unjustly assailed all over the world. It is being subjected to assaults here by radical newspapers and magazines, communists and the federal judiciary. Columnists and photographers have been sent to the South to take back to the people of the North untrue and slanted tales about the South. Truly a massive campaign of super-brainwashing propaganda is now being directed against the white race, particularly by those who envy its glory and greatness. Because our people have pride of race we are denounced as bigoted, prejudiced, racial propagandists and hatemongers by those who wish an impure, mixed breed that would destroy the white race by mongrelization. The integrationists and mongrelizers do not deceive any person of common sense with their pious talk of wanting only equal rights and opportunities for other races. Their real and final goal is intermarriage and mongrelization of the American people.

When members of the white race point with pride to its impressive record and call impartial history to witness its technical and political supremacy through the centuries, its cultural creativeness, we are sneered at as breeders of

race hatred. Pseudo-scientists tell us there is no such thing as a superior race. We are assured by them that the white race will some day be forced into an inferior place by the colored races of the world and that the day of white leadership is nearing its end.

Students of race recognize three main divisions: White, Mongoloid, and Negroid, each created by God with different qualities, instincts, and characteristics, transmissible by descent.

The white or Caucasion race includes peoples whose skin color may be white, pink, ruddy or light brown. Their hair is usually wavy or straight. It is never "dead black" or woolly. The white race includes the tall blonds of Northwest Europe, the Scandinavians, Norwegians, Dutch, Swedes, Russians and also the French, Germans, English, Italians and Americans, and further, the Greeks, the Jews, the Arabs, the Spanish and Portuguese.

So let us now study a little history and inquire if the white race has any justification for pride in its contributions to world civilization and leadership.

Members of the white race have ever been the world's discoverers and explorers, and from our race have come bold spirits like Lief the Red, Columbus, Vasco da Gama, Balboa, Magellan, Cabot, Drake, La Salle and Peary.

Consider sculpture: The white race has produced Proxiteles, Myron, Phidias, Donatello, Houdon, Rodin, Thorwaldsen, St. Gaudens, Daniel Chester French, Canova, Bernini, and Herbert Adams.

When you listen and enjoy beautiful music remember the great musicians: Mozart, Bach, Chopin, Beethoven, Handel, Liszt, Brahms, Wagner and Verdi, are of the white race.

No race has produced poets who compare with our poets: Virgil, Horace, Ovid, Pindar, Lucretius, and Dante;

in the English-speaking wold, Shakespeare, Milton, Byron, Burns, Wordsworth, Pope, Shelley, Tennyson, Whitman, Rosetti, Lanier and Poe.

When you come to consider the eminent artists of the ages, the white race takes pride in its Fra Angelico, Michaelangelo, Boticelli, Velasquez, Raphael, Titian, Rembrandt, Van Dyck, Rubens, Gainsborough, Millet, Corot, Landseer, Whistler, Benjamin West, Abbey and Gilbert Stuart.

The best in literature comes, too, from white authors: Homer, Cervantes, Montaigne, Victor Hugo, Sir Walter Sir Walter Scott, Charles Dickens, Tolstoy, Hans Christian Andersen, Ruskin, Robert Louis Stevenson, Rudyard Kipling, Thackeray and Macaulay.

The white race is proud of its philosophers: Socrates, Ulato, Maimonides, Aristotle, Spinoza, Francis Bacon, Locke, Descartes, Kant, Hume and Spencer.

Practically all useful inventions have been made by members of the white race: The airplane, steamboat, steel, wireless telegraphy, telephone, the telescope, the typewriter, the X-ray, movable type, the rotary printing press, the sewing machine, the cotton gin, the steam engine, the automobile, the motion picture machine, and the incandescent light bulb.

From the ranks of the white race have come the world's great law-givers, statesmen and jurists, among them: Solon of Athens, Gaius, Justinian, Crotius, Coke, Jefferson, Blackstone, Wilson, George Mason and Marshall.

Among the historians of the world the white race can claim Xenophon, Thucydides, Herodotus, Plutarch, Tacitus, J. R. Greene, J. A. Froude, Bancroft, Prescott and Carlyle.

When you consider the great surgeons and medical men the white race can claim Hippocrates, Galen, Vessalius, Pare, William Harvey, John Hunter, Crawford Long, J. Marion Sims, Cushing and Keen.

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Appendix C

Remember that Christ, a Jew, is the founder of Christianity. Recall, too, other great religious leaders: Moses, David, Solomon, Judas Maccabeus, John Knox, John Huss, Tyndale, Miles Coverdale, and John Wycliffe.

Every one of the 57 signers of the Declaration of Independence and every one of the 39 signers of the Federal Constitution were members of the white race.

When you look up at the universe of stars and galaxies, recall some of the white race's astronomers and scientists: Copernicus, Galileo, Herschel, Halley, Kepler, Newton and Sir James Jeans.

So when you call the roll of the world's noble and useful spirits, the men and women of the white race stand up in honor and glory with a just pride in the race's achievements. We have all kindly feelings for the world's other races, but we will maintain at any and all sacrifices the purity of our blood strain and race. We shall never submit to the demands of integrationists The white race shall forever remain white.