IN THE

Supreme Court of the United States

October Term, 1957

No. 91

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

Petitioner,

v.

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

On Writ of Certiorari to the Supreme Court of the State of Alabama

MOTION AND BRIEF OF *AMICI CURIAE*

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MOTION OF *AMICI CURIAE*

The undersigned, as counsel for American Jewish Congress; American Baptist Convention, Commission on Christian Social Progress; American Civil Liberties Union; American Friends Service Committee; American Jewish Committee; American Veterans Committee; Anti-Defamation League of B'nai B'rith; Board of Home Missions of

the Congregational and Christian Churches; Council for Christian Social Action of the United Church of Christ; Japanese American Citizens League; Jewish Labor Committee; National Community Relations Advisory Council; United Synagogue of America; and Workers Defense League, and on their behalf, respectfully move this Court for leave to file the accompanying brief as *amici curiae*.

The organizations that propose to submit this brief are private, voluntary associations of Americans formed to achieve specific purposes, religious, civic, educational, and others. As such, they have a direct interest in this proceeding which raises the question whether a state may constitutionally place prohibitions or crippling restrictions on the operation of a voluntary association similarly organized for a specific purpose, that of promoting equal rights for all, without discrimination based on race.

The record in this case shows that public officials of the respondent State of Alabama have attempted to frustrate the efforts of the petitioner National Association for the Advancement of Colored People (NAACP) on behalf of the rights of Negroes in Alabama and to outlaw it from the state. We are concerned with the implications of this assertion of governmental power irrespective of whether or not we support the aims of the NAACP in combatting racial inequality. It has become perfectly obvious that Alabama not only is attempting to maintain its statewide pattern of racial segregation but is also working for the destruction of all organized opposition to this policy. Alabama's effort to expel the NAACP has therefore placed in jeopardy the fundamental constitutional right of individuals to join together to form associations in order to express and advance their views.

The organizations that propose to submit the accompanying brief are deeply disturbed by this assault on freedom of association. Today, it is the NAACP that is subjected to attack. Tomorrow, the same measures

may be taken against any group that supports a cause opposed by state officials.[1]

In our complex society, the right individually to protest, individually to sue or to seek legislation is of but limited practical value by itself. Particularly in an atmosphere of extreme hostility, such as that which now confronts Southern opponents of racial segregation, the right to organize is protected, we believe, by the First, Fifth and Fourteenth Amendments against interference by government authorities.

In the accompanying brief, we argue that the order affirmed by the court below unreasonably restrains not only petitioner's freedom of association as guaranteed by the First and Fourteenth Amendments but also its liberty as guaranteed by the Fourteenth. The argument that petitioner's right to exist as an organization is a "liberty" within the meaning of that Amendment has not been developed in petitioner's brief.

We develop the argument that Alabama has unduly restrained freedom of association, as guaranteed by the First and Fourteenth Amendments, beyond its treatment in petitioner's brief, particularly showing that the right to freedom of association necessarily includes the right to preserve, as against unreasonable demands by the state, the anonymity of those who associate.

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[1] That the NAACP is not the only possible target of oppressive measures may be seen in a part of a speech made by the trial court judge in this proceeding. In a speech made on July 11, 1957, Judge Jones said that (103 Cong. Rec. A 5888-9):

> "Many of our religious organizations, the NAACP, and it has the financial and moral backing of the American Jewish Congress in New York, committees of labor unions, and the Supreme Court of the United States, and both of the Nation's chief political parties, are all working together to achieve complete integration of the races, and this we know is the first step toward amalgamation, the consolidating and fusing into 1 race the 2, the white and black races."

We make the further argument, not made in petitioner's brief, that the action of the State of Alabama denies petitioner due process of law because it unduly burdens petitioner's exercise of Federal rights. Petitioner is an association that was organized, in large part, to win for Negroes equal protection of the laws as guaranteed by the Federal Constitution and statutes. This activity, we maintain, like other activities inherently protected by the Federal Constitution and statutes, is protected against undue restraint by the states.

Each of these arguments, if sustained, would require reversal of the order below.

We respectfully urge that acceptance of this brief *amici curiae* is especially appropriate. The organizations joining in this motion are directly interested in the question whether the Federal Constitution stands as an effective shield against oppressive action by a state designed to exclude from its territory any organization it dislikes. Furthermore, many of them have members in the State of Alabama. Since the measures taken against the NAACP here could be taken against any organization, the right of each of these organizations to exist, as well as that of the NAACP, is at stake.

We have sought the consent of counsel for both parties to the filing of this brief. Counsel for petitioner consented but counsel for the State of Alabama refused consent.

Respectfully submitted,

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October 3, 1957

IN THE

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

On Writ of Certiorari to the Supreme Court of the State of Alabama

BRIEF OF *AMICI CURIAE*

The following organizations respectfully submit this brief, as *amici curiae,* in support of the petitioner:

American Jewish Congress; American Baptist Convention, Commission on Christian Social Progress; American Civil Liberties Union; American Friends Service Committee; American Jewish Committee; American Veterans

Committee; Anti-Defamation League of B'nai B'rith; Board of Home Missions of the Congregational and Christian Churches; Council for Christian Social Action of the United Church of Christ; Japanese American Citizens League; Jewish Labor Committee; National Community Relations Advisory Council; United Synagogue of America; and Workers Defense League. Our interest in the issues raised by this case is set forth in the motion for leave to file a brief *amici curiae* annexed hereto.

Statement of the Case

The proceedings in this case are fully detailed in petitioner's brief (pp. 8-11) and will be only briefly summarized here.

The petitioner, National Association for the Advancement of Colored People (NAACP), is a New York membership corporation formed in part to promote equal rights for Negro citizens of the United States. Petitioner has maintained a Southeast Regional Office in Birmingham, Alabama, and has organized local affiliates in that state (R. 1-2, 6).

On June 1, 1956, the Attorney General of Alabama filed a bill of complaint in the Circuit Court of Montgomery County, Alabama, asking it to enjoin petitioner from conducting any business in that state. The bill of complaint charged petitioner with, among other things, not having registered as a foreign corporation as required by Alabama law and with having furnished legal help and financial assistance to persons challenging racial segregation at the University of Alabama and on the buses in the State capital (R. 1-2).

On the same day, the Circuit Court issued an *ex parte* temporary restraining order and injunction prohibiting petitioner from conducting any business, from maintaining

offices, organizing chapters or soliciting members, contributions or dues in the state. The court also enjoined petitioner—although the State's bill of complaint did not request it—from filing any document with Alabama officials that would qualify it to do business in the state (R. 2-3, 18-20).

Subsequently, on motion by the State, the court issued an order of discovery requiring petitioner to produce for inspection by the State a large number of records and documents including all correspondence in its Alabama files concerning certain Federal court suits challenging racial segregation and a list of all of its members in the state (R. 6, 20-22). The order was issued over petitioner's objection that it violated its constitutional rights (R. 6).

Petitioner, in its answer to the complaint, offered to comply at once with the registration statute (R. 7). Thereafter petitioner agreed to submit all the data required except its correspondence and membership lists (R. 11-13). The court held this to be insufficient compliance with its order and fined petitioner $100,000 (R. 14-15). The court never considered petitioner's motion to dismiss the original complaint and the restraining order issued thereunder (R. 16). Its judgment was affirmed by the Supreme Court of Alabama (R. 23-30). The proceeding is here on writ of certiorari to review that decision.

Question Presented

We adopt the statement of the Question Presented as set forth in petitioner's brief (p. 2):

> "Did the State of Alabama interfere with the freedom of speech and freedom of association and deny due process of law to petitioner, the NAACP, and its

members in violation of the Fourteenth Amendment in interfering with and prohibiting the continuation of the efforts of petitioner to secure and enforce rights of Negro citizens guaranteed by the Constitution and laws of the United States?"

Summary of Argument

Freedom of association is a liberty guaranteed against Federal infringement by the Fifth Amendment to the United States Constitution and against state infringement by the Fourteenth. In addition it is one of the co-equal guarantees of the First Amendment applied to the states by the Fourteenth. It is a freedom secured not only to the members of the association but to the association itself as well. In any event, the association has the status to assert and defend its members' freedom to associate in it.

Besides the general right of freedom of association enjoyed by petitioner, it is entitled to special Federal protection against state interference by reason of the fact that it is an organization whose purpose and activities are the protection of Federally secured rights, and as such may not be subjected to oppressive and burdensome state restrictions.

For these reasons the State of Alabama may not destroy petitioner or forbid its activities. Moreover, it may not indirectly effect the same result by imposing restrictions whose purpose and effect is to destroy petitioner or frustrate its activities. In view of the nature of petitioner and the climate in which it operates in the State of Alabama, a requirement that it make public its membership records constitutes the imposition of an oppressive burden whose effect is to prevent petitioner from carrying out its activities in that state.

In any event, an association, like an individual, has a constitutional right of anonymity which may not be governmentally impaired in the absence of some justification in terms of a lawful governmental objective. No such justification has been shown in this case and none in fact exists.

Hence, the order of the Alabama court forbidding petitioner to carry on its activities in that state and requiring it to disclose its membership is unconstitutional state action in deprivation of rights guaranteed by the Federal Constitution and should therefore be reversed and set aside.

ARGUMENT

POINT ONE

Freedom of association is a liberty guaranteed by the Fourteenth Amendment to the United States Constitution and is one of the co-equal guarantees of the First Amendment applied to the states by the Fourteenth.

A. Freedom to Associate as a Constitutional "Liberty"

At least since this Court's decision in *Meyer* v. *Nebraska,* 262 U. S. 390 (1923), it has been recognized that the liberty secured against state deprivation by the Fourteenth Amendment and Federal deprivation by the Fifth extends far beyond mere freedom from bodily restraint. The term "liberty," the Court said in that case (262 U. S. at 399),—

> "denotes not merely freedom from bodily restraint, but also the right of an individual to contract, to

> engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

This principle was re-asserted by this Court as recently as 1954. In *Bolling* v. *Sharpe,* 347 U. S. 497, 499, the Court, speaking through the Chief Justice, said:

> "Although the Court has not assumed to define 'liberty' with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective."[1]

It is indisputable, we submit, that the associating together by men to pursue a common objective or, indeed, for no objective other than to enjoy each other's company is "conduct which the individual is free to pursue" in "the orderly pursuit of happiness by free men." Civilized society contemplates free and voluntary associations among the people. So long as man remains a gregarious being, his urge to associate with fellow men will be as vital and as compelling as his urge to live. A

[1] Dean Roscoe Pound has pointed out (*The Development of Constitutional Guarantees of Liberty* (1957), p. 48) that the Constitution was drafted by lawyers who took Lord Coke's comments on Magna Carta "for a legal Bible" and that Coke there described the word "liberties" as "meaning more than freedom of the physical person from arrest or imprisonment" but as including "the freedoms that men have."

constitutional provision protecting liberty against arbitrary governmental deprivation would have little meaning if it did not encompass the freedom of men to associate with each other.

What John Locke, in his *Letter Concerning Toleration* (1689), said about religious association has been recognized and accepted as part of our constitutional system in respect to all associations. A "society of members voluntarily uniting to [a common] end" is entitled to manage its own affairs and to be free from arbitrary governmental restrictions and restraints. A totalitarian state is by its nature suspicious of, if not actively hostile to, all associations not dominated by the state and looks to every such association as a potential rival if not enemy.[2] Our Anglo-American heritage on the other hand welcomes voluntary associations as an indispensable aspect of a democratic pluralistic society.

The state courts have uniformly recognized freedom to associate as a liberty constitutionally protected from arbitrary governmental restraint. As long ago as 1873, in *City of St. Louis* v. *Fitz*, 53 Mo. 582, a concurring opinion by Judge Sherwood of the Missouri Supreme Court condemned as unconstitutional on its face an ordinance making it a crime "knowingly to associate with persons having the reputation of being thieves and prostitutes." He declared that "its direct effect is to invade and necessarily destroy one at least of those 'certain inalienable rights' of the citizen bestowed by the Creator and guaranteed by the organic law, personal liberty." Although the majority of the court held only that the ordinance was unconstitutional as construed, a similar ordinance

[2] Suppression of independent associations is a normal and necessary feature of totalitarian regimes, both Communist (Fainsod, *How Russia is Ruled* (1954), pp. 109, 127, 320) and Fascist (Tolischus, *They Wanted War* (1940), pp. 143-4).

was subsequently declared unconstitutional on its face in *City of St. Louis* v. *Roche,* 128 Mo. 541 (1895). At that time, the Missouri court expressly approved Judge Sherwood's opinion in the *Fitz* case. In the *Roche* case, the court said (128 Mo. at 546):

> "If it can be made a penal offense for a person to associate with those of his own choosing, however disreputable they may be, when not in furtherance of some overt act of public indecency, or the perpetration of some crime, then it necessarily follows that by the same authority he may be compelled to associate with persons *not* of his own choosing."

The *Roche* decision was followed in *Ex Parte Smith,* 135 Mo. 223 (1896). Subsequently, a number of state courts followed the lead thus given by Missouri. *Ex Parte Cannon,* 94 Tex. Cr. R. 257 (1923); *City of Watertown* v. *Christnacht,* 39 S. D. 290 (1917); *Coker* v. *Fort Smith,* 162 Ark. 567 (1924) and *People* v. *Belcastro,* 356 Ill. 144 (1934). In the last cited case, the court summed up the holdings of the various cases in the statement that "No legislative body in this country possesses the power to choose associates for citizens" (356 Ill. at 148).[3]

Even where a "consorting with criminals" statute has been upheld, it has been on the basis that the statute required the association to be with intent to commit a crime. Thus, in sustaining the validity of section 722 of the New York Penal Law, which makes it a misdemeanor to consort with thieves and criminals "with intent to provoke a breach of the peace" and "with an unlawful purpose," the Court of Appeals said (*People* v. *Pieri,* 269 N. Y. 315, 322, 324 (1936):

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[3] The cases are discussed in Abernathy, "Right of Association," 6 So. Car. L. Q. 32, 46-47 (1953).

"The combination of intents, however, indicates that the association of these evil-minded persons must be to do or plan something unlawful. The consorting alone is no crime * * *.

"* * * Mere association of people of ill repute with no intent to breach the peace or to plan or commit a crime is too vague a provision to constitute an offense."

In sum, as de Tocqueville said more than a hundred years ago (*Democracy in America,* Vintage Edition (1954), Vol. I, p. 203):

"The most natural privilege of man, next to the right of acting for himself, is that of combining his exertions with those of his fellow creatures and of acting in common with them. The right of association therefore appears to me almost as inalienable in its nature as the right of personal liberty. No legislator can attack it without impairing the foundations of society."

Of course, like all other constitutionally protected rights, the right to associate is subject to reasonable restrictions where necessary for the protection of a paramount communal interest. We discuss below whether the limitation on petitioner's freedom imposed by Alabama is a reasonable restriction on this constitutional right.

B. Freedom of Association Under the First and Fourteenth Amendments

The First Amendment provides that:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press;

or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

This Court has declared that, "The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental." *DeJonge* v. *Oregon*, 299 U. S. 353, 364 (1937). The three rights, indeed, are "inseparable." *Thomas* v. *Collins*, 323 U. S. 516, 530 (1945). Thus the right of assembly is "an independent right similar in status to that of speech and press." Cushman, *Civil Liberties in the United States* (1956), p. 60.[4]

Like the other basic First Amendment freedoms, freedom of assembly is protected by the Fourteenth Amendment against unreasonable impairment by the states. *DeJonge* case, *supra; Whitney* v. *California*, 274 U. S. 357 (1927); *Thomas* v. *Collins, supra; Hague* v. *Committee for Industrial Organization*, 307 U. S. 496 (1939).

It is now also well established that freedom of assembly is not limited to occasional meetings but includes the organization of associations on a permanent basis.

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[4] The First Congress, while it was drafting the First Amendment, was clearly reminded that the three rights were part of a seamless web (1 Annals 759-761): At one point, Representative Sedgwick objected to inclusion of assembly with speech and press as being too trifling and obvious. "If people freely converse together they must assemble for that purpose; it is a self-evident, unalienable right which the people possess; it is certainly a thing that never would be called in question; * * *" He likened it to listing the right to put on one's hat. Representative Page noted that the right of assembly and, indeed, the right to wear a hat, had been infringed upon and it was necessary to protect the right of assembly because "If the people could be deprived of the power of assembling under any pretext whatsoever, they might be deprived of every other privilege contained in the clause."

Thus, "freedom of association" may be viewed as a right to conduct indefinitely continuing assemblies.[5]

Thus, in *Thomas* v. *Collins, supra,* this Court held that the right to discuss labor unions and to urge people to join them "is protected not only as part of free speech, but as part of free assembly" (323 U. S. at 532).

As early as 1927, this Court recognized freedom of association as a separate and independent right in holding that a California anti-syndicalism law was a restraint upon "the rights of free speech, assembly, and association" but that it was necessary to protect the state from serious injury. *Whitney* v. *California, supra,* 274 U. S. at 372. Subsequently, in *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U. S. 123, 141 (1951), the functioning of associations was described as "a legally protected right." See also *United Public Workers* v. *Mitchell,* 330 U. S. 75 (1947); *Bridges* v. *Wixon,* 326 U. S. 135, 163 (1945).

The constitutional status of freedom of association was most recently reaffirmed by this Court in *Sweezy* v. *New Hampshire,* 354 U. S. 234, 250 (1957).

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[5] The constitutional synthesis is described in Emerson & Haber, *Political and Civil Rights in the United States* (1952), p. 248:

> "This right of association is basic to a democratic society. It embraces not only the right to form political associations but also the right to organize business, labor, agricultural, cultural, recreational and numerous other groups that represent the manifold activities and interests of a democratic people. In many of these areas, an individual can function effectively in a modern industrial community only through the medium of such organization * * *
>
> "The United States Constitution nowhere explicitly recognizes a right to form political organizations. * * * Yet it is generally accepted that the rights in the First Amendment to freedom of speech, press and assembly, and to petition the government for redress of grievances, taken in combination, establish a broader guarantee to the right of political association."

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> "* * * Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents."

Freedom of association has also been given international recognition. On December 10, 1948, the General Assembly of the United Nations, with the full approval and support of the United States, adopted the Universal Declaration of Human Rights, Article 20(1) of which declares:

> "Everyone has the right to freedom of peaceable assembly and association."[6]

Thus, freedom of speech, press, assembly and association are all part of one complex in which each supports the others. If any one is recognized, logic requires equal recognition of the rest. Conversely, impairment of any one necessarily impairs the effectiveness of the rest.

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[6] This provision came about as result of the activities of a committee appointed in 1945 by the American Law Institute. The committee, representing the "principal cultures of the world," published a "Statement of Essential Human Rights" (distributed by Americans United for World Organization). That group took pains to spell out the guarantee of freedom of association as distinct from freedom of assembly. Article Four of the Statement guarantees freedom of assembly. Article Five provides:

> "Freedom to form with others associations of a political, economic, religious, social, cultural, or any other character for purposes not inconsistent with these articles is the right of everyone."

See also *Beatty* v. *Gillbanks,* 9 Q. B. D. 308 (1882).

While we do not believe that freedom of association is limited to circumstances in which it is used to implement assertion of the other freedoms, it is at least true that it finds part of its justification in its ability to do so. This was aply spelled out by the Supreme Court of Massachusetts in a decision condemning a statute curbing political activity of labor unions. In *Bowe* v. *Secretary of the Commonwealth,* 320 Mass. 230, 252 (1946), the court said:

> "One of the chief reasons for freedom of the press is to ensure freedom, on the part of individuals and associations of individuals at least, of political discussion of men and measures, in order that the electorate at the polls may express the genuine and informed will of the people. (Citations omitted) Individuals seldom impress their views upon the electorate without organization. They have a right to organize into parties, and even into what are called 'pressure groups,' for the purpose of advancing causes in which they believe."

The late Mr. Justice Jackson, concurring in the *Joint Anti-Fascist* case, *supra* (341 U. S. at 187), noted that citizens must often

> "'* * * pool their capital, their interests, or their activities under a name and form that will identify collective interests, * * * to permit the association or corporation in a single case to vindicate the interests of all.'" [7]

[7] It was this same need to pool strength and resources that was recognized by Chief Justice Taft in his classic defense of the right of workers to organize unions. *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184, 209 (1921).

Mr. Justice Rutledge similarly noted (concurring in *U. S. v. Congress of Industrial Organizations*, 335 U. S. 106, 143-4 (1948)):

> "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."

Judicial recognition of freedom of association as a constitutional right mirrors a fact of American life long recognized by observers of the American scene.[8] Alexis de Tocqueville remarked in 1840 that Americans form associations for every possible purpose. Noting that such joint activity was necessary in a democracy, he concluded that, "If men living in democratic countries had no right and no inclination to associate for political purposes, their independence would be in great jeopardy; * * *" (de Tocqueville, *supra*, Vol. II, p. 115).

Forty-eight years later, Lord Bryce similarly stressed the importance of associations in this country. He said (*The American Commonwealth*, Third Edition (1899), Vol. II, pp. 278-279):

> "Such associations have great importance in the development of opinion, for they rouse attention, excite discussion, formulate principles, submit plans, embolden and stimulate their members, produce that impression of a spreading movement which goes so far

[8] See the chapter, "Biography of a Nation of Joiners," in Schlesinger, *Paths to the Present* (1949), pp. 23-50. The special importance of the group as "the basic political form" is stressed in Latham, *The Group Basis of Politics* (1952), p. 10.

> towards success with a sympathetic and sensitive people * * * this habit of forming associations * * * creates new centres of force and motion, and nourishes young causes and unpopular doctrines into self-confident aggressiveness."

President Lowell of Harvard University said in 1914 (*Public Opinion and Popular Government,* American Citizen Series, p. 39):

> "Freedom of expressing dissent includes liberty of organization, and in order that this may be completely effective it must not be confined to purely political objects, but must become a part of the popular customs, covering all matters in which people are interested."

This theme was reiterated most recently by the late Professor Chafee (*The Blessings of Liberty* (1956), pp. 150-151):

> "If we look over our national history, we see that many of the most significant political and social changes began with the efforts of some small informal group disliked by the ordinary run of citizens. The abolition of slavery grew out of Garrison's Anti-Slavery Society and similar associations. The Nineteenth Amendment is the culmination of the activities of a few unpopular women in the middle of the last century. The popular election of Senators, the federal income tax, and several other reforms largely originated with the Grangers and the Populists * * *. Under modern conditions, freedom of speech under the First Amendment is likely to be ineffective if it means only the liberty of an isolated individual to talk about his ideas. Indeed, from the very beginning, freedom of speech has involved the liberty of a number of individuals to associate themselves for the advocacy of a common purpose

> whether they exchange ideas in a hall or by mail like the Committees of Correspondence before the Revolution. Thus, freedom of speech and freedom of assembly fit into each other. They are both related to the possibility of petitioning Congress and the state legislatures for redress of grievances, which is only part of the wider freedom to submit the views of the individual or the group to the people at large for judgment."

An apt summary is supplied by a South Carolina political scientist (Abernathy, "Right of Association," 6 So. Car. L. Q. 32, 75-76 (1953)):

> "Associations have a place of particular importance in a democracy, whether they are associations of laborers, professional men, or electors and office-seekers. They serve as a training ground for group participation, organization and management of people and programs, and for democratic acceptance of the majority will. They can also serve as a potential influence for improvement of communication between the individual and the government. Concerted demands for action by associations of people have a better chance for accomplishing the desired governmental action than do scattered individual requests. And the information furnished to administrators and legislators by private associations of various kinds is in many instances vital to the intelligent treatment of particular problems."

It is not surprising therefore to find that at least 5,000 national associations exist in the United States. (Rose, *Theory and Method in the Social Science* (1954), pp. 52n, 55-56.)

C. The Association's Freedom of Association

We submit that the freedom of association guaranteed by the Constitution is enjoyed not merely by the individual members of the association but by the association itself. Indeed, freedom of association would be of little value if only the individual members could assert judicially a claim to its protection, for the justification for freedom of association lies in the recognition that unorganized individuals are frequently unable or unwilling to assert the rights that lie at the foundation of a democratic society. Accordingly, this Court has frequently recognized and acknowledged the status of an association to assert its members' right that the association be permitted to exist and to conduct its activities free of unreasonable and oppressive government restrictions.

Pierce v. *Society of Sisters,* 268 U. S. 510 (1925), we submit, is exactly in point. In that case, this Court, following *Meyer* v. *Nebraska, supra,* held that the right of parents to have their children educated in private schools was a constitutionally protected liberty under the Fourteenth Amendment. But the right was not asserted by any parent; no parent was a party to the litigation between the private association conducting the school and the State of Oregon. Nevertheless, the Court expressly allowed the association to assert the right.

Determinative too, we submit, is *Joint Anti-Fascist Committee* v. *McGrath, supra,* wherein this Court recognized the constitutional right of associations to be free from arbitrary governmental action whose "effect is to cripple the functioning and damage the reputation of those organizations in their respective communities and in the nation"

(341 U. S. at 139). In *Kedroff* v. *St. Nicholas Cathedral*, 344 U. S. 94 (1952), this Court recognized the right of a religious association to assert judicially its members' constitutionally protected freedom of worship and its own right to freedom from arbitrary governmental interference with its activities.[9] These and other decisions of this Court (*e.g.*, *Adler* v. *Board of Education*, 342 U. S. 485 (1952); *American Communications Association* v. *Douds*, 339 U. S. 382 (1950); *United Public Workers* v. *Mitchell*, 330 U. S. 75 (1947)) expressly or implicitly recognize the status of an association to assert in its own right the constitutional freedom from arbitrary restraints upon its existence or its activities.[10]

POINT TWO

An organization whose purpose and activities are the protection of Federally secured rights may not be subjected to oppressive and burdensome state restrictions.

We have sought to show above that the petitioner herein and its members enjoy a constitutionally protected freedom of association immune from arbitrary and unreasonable state restraints. It also has a right of narrower scope, predicated on the particular nature of the organization and the organized activity here affected. We here argue that the activities of petitioner in seeking enforcement of Federally secured rights are entitled to protection from oppressive or burdensome state interference, wholly aside from its rights as a lawful association.

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[9] See also: Howe, "Political Theory and the Nature of Liberty," 67 Harv. L. Rev. 91 (1953); Figgis, *Churches in the Modern State* (1951); Laski, "The Personality of Associations," 29 Harv. L. Rev. 404 (1916).

[10] See also Comment: "State Control of Political Organizations: First Amendment Checks on Powers of Regulation," 66 Yale L. J. 545, 546-550 (1957).

A. The Nature of Petitioner's Activity

The formation, organization and structure of the NAACP are described in its brief (pp. 2-7). As there clearly appears, one of the primary purposes of the Association and its principal activity is protection of the rights of equality guaranteed by the United States Constitution and by Federal statutes.

The State of Alabama has itself placed that fact beyond dispute. One of its complaints against the Association, on which it based its demand that its activities be terminated, was the fact that the Association had supported efforts to end state-enforced racial segregation (R. 2). This proceeding was thus avowedly designed to frustrate efforts to vindicate Federally secured rights. The order issued by the trial court has accomplished that aim. The barrier to vindication of constitutional guarantees has been erected by action of the state, through its executive and judicial branches.

B. Petitioner's Activities in Vindication of Federally Secured Rights May Not Be Unduly Burdened by the State

We submit that the petitioner's interest in the vindication and enforcement of Federal constitutional and statutory guarantees stands on the same footing as other Federally secured interests that this Court has protected from undue burden by the states.

Thus, this Court has repeatedly invalidated state laws burdening interstate commerce. See, for example, *Buck* v. *Kuykendall,* 267 U. S. 307 (1925); *Fidelity and Deposit Co.* v. *Tafoya,* 270 U. S. 426 (1926); *Hanover Insurance Co.* v. *Harding,* 272 U. S. 494 (1926); *Southern Pacific Company* v. *Arizona,* 325 U. S. 761 (1945); *Morgan* v. *Virginia,* 328

U. S. 373 (1946). It has similarly condemned limitations on the movement of individuals from state to state. *Crandall* v. *Nevada,* 73 U. S. (6 Wall.) 35 (1867); *Edwards* v. *California,* 314 U. S. 160 (1941). It has curbed state legislation restraining exercise of rights created by Federal laws. *Hill* v. *Florida,* 325 U. S. 538 (1945). In *Slochower* v. *Board of Higher Education,* 350 U. S. 551 (1956), this Court struck down a statute penalizing the exercise of the Fifth Amendment privilege against self-incrimination, noting that (350 U. S. at 558):

> "The heavy hand of the statute falls alike on all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive."

Particularly significant to the instant proceeding is the protection that has been given to the right to invoke the processes of the Federal courts. In *Terral* v. *Burke Construction Co.,* 257 U. S. 529 (1922), that right was held paramount to the very state interest involved here, regulation of foreign corporations. This Court invalidated an Arkansas law that prohibited foreign corporations from doing business in Arkansas if they availed themselves of the right to start suits in a Federal court or have them removed to such a court. In words clearly applicable here, Chief Justice Taft said that condemnation of the statute (257 U. S. at 532-3)

> "* * * rests on the ground that the Federal Constitution confers upon citizens of one State the right to resort to federal courts in another, that state action, whether legislative or executive, necessarily calculated to curtail the free exercise of the right thus secured is void because the sovereign power of a State in excluding foreign corporations, as in the exercise of all others

of its sovereign powers, is subject to the limitations of the supreme fundamental law."

The mere fact that the State of Alabama has the right to regulate the operation of foreign corporations within its borders does not give it *carte blanche* to curb their activities in asserting Federal rights. Justice Holmes pointed this out in *Fidelity* v. *Tafoya, supra* (270 U. S. at 434):

> "But it has been held a great many times that the most absolute seeming rights are qualified, and in some circumstances become wrong. One of the most frequently recurring instances is when the so-called right is used as part of a scheme to accomplish a forbidden result. *Frick* v. *Pennsylvania,* 268 U. S. 473. *American Bank and Trust Co.* v. *Federal Reserve Bank of Atlanta,* 256 U. S. 350, 358. *Badders* v. *United States,* 240 U. S. 391, 394. *United States* v. *Reading Co.,* 226 U. S. 324, 357. Thus the right to exclude a foreign corporation cannot be used to prevent it from resorting to a federal court, *Terral* v. *Burke Construction Co.,* 257 U. S. 529; or to tax it upon property that by established principles the State has no power to tax, *Western Union Telegraph Co.* v. *Kansas,* 216 U. S. 1, * * *"

The *Crandall* case, *supra,* makes it clear that the government and the citizen are equally entitled to demand protection against such interference. This Court there pointed out that the Federal government frequently has need to move its officials from state to state and could not permit taxes on such movements. It went on (73 U. S. at 44):

> "But if the government has these rights on her own account, the citizen also has correlative rights. He has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions * * * and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it."

We submit that the State of Alabama denies petitioner due process of law when it uses its courts to prevent or deter the petitioner from furnishing legal counsel to an Alabama citizen in a proceeding designed to test the State's "policy of denying entrance to Negroes" (R. 2), or to prevent it from supporting action "to compel the Capitol Motor Lines of Montgomery, Alabama, to seat passengers without reference to race" (R. 2). These allegations in the State's complaint make it plain that the proceeding instituted by Alabama was intended to halt and has in fact halted legitimate efforts to invoke Federal law. It was thus "part of a scheme to accomplish a forbidden result." *Fidelity* v. *Tafoya,* quoted *supra.*

It is no answer to say that the State of Alabama has not interfered with individuals seeking to vindicate Federal rights but only with those who offer them organized support. We have shown above that organization is virtually essential to the advancement of unpopular causes in today's complex society. It is plain enough, as Professor Arthur Schlesinger says (*op. cit., supra,* at p. 49), that:

> "The burden of championing minority rights and unpopular causes has fallen on other types of associa-

tions, notably humanitarian, labor and reform bodies. These have helped educate the public to the need for continuing change and improvement and in their aspects as pressure groups have done much to keep legislatures and political parties in step with the times."

Petitioner's activities are designed to give reality to Federal constitutional guarantees. The national interest in the same end requires this Court to remove unwarranted restraints upon efforts to achieve it.

POINT THREE

The State of Alabama may not directly destroy petitioner or forbid its activities.

A. The Special Nature of the Right Claimed

We have shown that the right of association is protected by the First and Fourteenth Amendments. We contend that this right, especially when, as here, it is exercised with a view to vindication of other constitutionally-protected rights in the Federal courts, is among "those liberties of the individual which history has attested as the indispensable conditions of an open as against a closed society [and which therefore] come to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." Mr. Justice Frankfurter, concurring in *Kovacs* v. *Cooper,* 336 U. S. 77, 95 (1949).

The right of association, as exercised by petitioner and as sought to be abridged by respondent, is one of the rights which lie "at the foundation of free government by free men. * * * In every case, therefore, where legis-

lative abridgement of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preference or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." *Schneider* v. *New Jersey,* 308 U. S. 147, 161 (1939).

In weighing the state action here attacked against the right here asserted, it should be remembered that "the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." *Thomas* v. *Collins,* 323 U. S. 516, 530 (1945). Much more than a mere "rational basis" must be shown to justify state interference with the fundamental right sought to be exercised by petitioner.

B. Alabama Has Not Demonstrated the Necessity for Its Restrictive Action

As against the societal interest in preserving freedom of association, and the special Federal interest in protecting activities for the vindication of Federally secured rights, what can Alabama offer as justification for the order it has sought and obtained from its courts prohibiting petitioner from functioning? The only apparent goals of the proceeding initiated by the state are enforcement of its law requiring registration of foreign corporations[11] and prevention of anti-segregation activity.

The first of these goals is manifestly insufficient to justify the Draconian action taken here. As petitioner

[11] We take no position on whether the Alabama statute dealing with foreign corporations (Ala. Code, 1940, Title 10, Secs. 192, 193, 194) actually requires petitioner, a non-profit membership corporation, to register or whether the statute is valid as so applied.

has amply shown in its brief (pp. 32-38), if Alabama sought only the enforcement of its registration statute, it was entirely unnecessary to put the Association out of business by a judicial order, entered without notice or hearing. Moreover, in view of petitioner's assertion, early in the proceeding, that it was prepared to comply with the registration requirement (R. 7), the continuation of the proceeding and the court's order prohibiting the Association from complying patently had a deeper motivation.

This can be found in the allegations in the State's original bill of complaint that petitioner was engaged in anti-segregation activities and that it was causing "irreparable injury to the property and civil rights of the citizens of Alabama" (R. 2). The allegations of petitioner's anti-segregation activity are the only part of the bill of complaint that can account for the State's insistence that petitioner immediately cease operations. Moreover, the measures taken against the NAACP here are part of a pattern of similar steps taken by other states, all designed to make it impossible for the NAACP to operate (*Assault Upon Freedom of Association, A Study of the Southern Attack Upon the National Association for the Advancement of Colored People,* American Jewish Congress (1957)).

But Alabama's interest in halting anti-segregation activity (presumably in order to "protect the public against false doctrine," Mr. Justice Jackson concurring in *Thomas* v. *Collins, supra,* 323 U. S. at 545) certainly cannot outweigh the constitutional objective of protecting freedom of association and protecting vindication of Federally secured rights. Indeed, that interest cannot even claim a place in the scales. The segregation that Alabama seeks to preserve at its State University and on the bus lines in its State capital has been specifically condemned by this and other Courts. *Gayle* v. *Browder,* 352 U. S. 903 (1956),

affirming 142 F. Supp. 707; *Brown* v. *Topeka,* 347 U. S. 483 (1954); *Sweatt* v. *Painter,* 339 U. S. 629 (1950). The obligation of the State of Alabama toward petitioner and its members is to grant them "protection in the lawful exercise of their rights as determined by the courts" and not "to make that exercise impossible." *Sterling* v. *Constantin,* 287 U. S. 378, 402 (1932).

POINT FOUR

The State of Alabama may not indirectly destroy petitioner or frustrate its activities by requiring it to expose its membership lists.

A. Indirect Destruction and Frustration by Oppressive Burdens

If freedom to associate may not be directly forbidden, the same result cannot constitutionally be achieved by imposing burdensome conditions that effectually prevent or unduly harass its exercise. *Hannegan* v. *Esquire,* 327 U. S. 146 (1946); *Murdock* v. *Pennsylvania,* 319 U. S. 105 (1943). This was plainly established by this Court in its successive decisions in *Pierce* v. *Society of Sisters, supra* and *Farrington* v. *Tokushige,* 273 U. S. 284 (1927). In *Pierce,* this Court held that a state could not constitutionally prohibit the operation of private schools. Two years later, in *Farrington,* it held equally unconstitutional minute and detailed government regulation that would have made their operation difficult if not impossible. As the *Pierce* case held that a private, voluntary educational association could not constitutionally be outlawed, the *Farrington* case held that the operations of such an association could not constitutionally be subjected to oppressive and burdensome regulations.

B. The Oppressive Burden of Compulsory Exposure

The mantle of protection that the Constitution throws over the right to hold and espouse political, religious and other views is designed primarily for those who adhere to unpopular causes, those who advance the "opinions we loathe." (Justice Holmes dissenting in *Abrams* v. *U. S.*, 250 U. S. 616, 630 (1919).) No Bill of Rights is needed to protect what is popular and conventional. Thus, we must assume, in testing any proposed application of the constitutional guarantees, that the cause in question is repudiated and actively opposed by the majority of the community and, probably, by those who control the government as well.

In this case, however, it is not necessary to hypothesize the unpopularity of the cause. Here, not only unpopularity but official hostility is plainly shown. We need not repeat the ample demonstration made in petitioner's brief (pp. 12-17) that any Negro in Alabama whose affiliation with petitioner becomes public runs a substantial risk of economic retribution and even physical violence.

Indeed, in at least one respect, punishment is imposed by agencies of the respondent itself. Under local laws adopted by the State legislature, the boards of education of two Alabama counties are authorized to discharge public school teachers who belong to organizations advocating racial integration (R. 13). If petitioner produced its membership lists containing the names of teachers in those counties, their jobs would be forfeited under these laws.

In *Joint Anti-Fascist Refugee Committee* v. *McGrath, supra,* it was recognized that the climate in which an organization exists and carries on its activities is a reality that must be considered in determining whether the organization has been accorded due process of law. The Court

there sustained the legal sufficiency of a complaint which alleged that the action of the Attorney General "caused many contributors, especially present and prospective civil servants, to reduce or discontinue their contribution to the organization; members and participants in its activities have been 'vilified and subjected to public shame, disgrace, ridicule and obloquy * * *' thereby inflicting upon it economic injury and discouraging participation in its activities; it has been hampered in securing meeting places; and many people have refused to take part in its fund-raising activities" (341 U. S. at 131).

The oppressive effect of exposure was also clearly recognized in the recent case of *Watkins* v. *U. S.*, 354 U. S. 178, 197 (1957) wherein this Court stated that when "forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous."

The very factors that justify protection of freedom of association in a democracy require also that organizations be protected from prying by an unfriendly government. If association "nourishes young causes and unpopular doctrines into self-confident aggressiveness" (Bryce, *supra*), it is only after they have grown strong enough to "produce that impression of a separate movement which goes so far towards success" (*ibid*). At the early critical formative stage of a movement, anonymity may well mean the difference between life and death.

The close relationship of anonymity to effective organization has received express recognition under the Federal statutes guaranteeing the right of employees to organize labor unions. As petitioner's brief clearly demonstrates (pp. 27-29), the rights created by the Wagner Act would be illusory if the employer were free to discover the names of the first employees to join. Hence, the National Labor Relations Board and the courts have held that the right

to organize necessarily includes the right to do so secretly, as petitioner has shown in its brief.[12]

We submit, therefore, that state-compelled disclosure of the membership of an unconventional or unpopular association destroys its effectiveness and frustrates performance of its constitutionally protected activities. Such state compulsion is as violative of First and Fourteenth Amendment rights as is direct destruction of the association or prohibition of its activities, unless it is necessary to achieve a paramount state objective. We show below that no such justification appears here.

C. The Constitutional Right of Anonymity

Aside from the harrassing aspect of the requirement of exposure, we believe that it impairs a constitutional right of anonymity that may not be infringed in the absence of an overriding communal interest which the state is constitutionally competent to protect. The right of anonymity is an incident of a civilized society and a necessary adjunct to freedom of association and to full and free expression in a democratic state.

In *Watkins* v. *U. S., supra,* this Court said (354 U. S. at 187):

> "There is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress."

What is true of individuals, we believe, is true of associations; and what is true of Congress is true of all other agencies of government, Federal and state. Government may not, without justification, pierce the veil of anonymity.

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[12] The matter of union secrecy is dealt with in detail in the government's brief *amicus curiae* in *Thomas* v. *Collins, supra,* 1944 Term, No. 14, pp. 21-31.

It is also worth noting that, despite the large number of state statutes passed in the last fifteen years substantially restricting union activities, none requires exposure of membership lists.

D. The Place of Anonymity in a Democratic Society

It is important to recognize that there is nothing inherently wrong in desiring to keep one's name from the public. Anonymity has a long and honorable history and may serve important social objectives. The cause of civilized progress was greatly benefited by the fact that Daniel Defoe could publish anonymously his *Shortest Way with the Dissenters,* and it was correspondingly greatly harmed when Defoe's identity was discovered and he was fined and pilloried for his offense (Minto, *Daniel Defoe* (1909), pp. 38-40).

In this country, even before the founding of our republic, the practice of speaking anonymously on social and political matters was accepted as normal and proper. Benjamin Franklin signed his first pieces for the *New England Courant* as "Silence Dogwood" (Bleyer, *Main Currents in the History of American Journalism* (1927), pp. 56-57). The use of names like "Philanthrop," "Humanus" and "Cato" as signatures on articles on public affairs was widespread (*Id.,* pp. 43-100). In 1775, Thomas Paine used the signature "Humanus" in an article for the *Pennsylvania Journal;* after Rev. William Smith, president of the University of Philadelphia, used the name "Cato" in attacking Paine's *Common Sense,* Paine replied under the name of "Forester" (*Id.,* p. 91). The *New Hampshire and Vermont Journal or Farmers Weekly Museum* regularly published articles in the 1790's written by such persons as "The Lay Preacher," "Peter Pencil," "Simon Spunkey," "Peter Pendulum" and "The Pedlar" (*Id.,* p. 128).

The most famous of all American political writings, *The Federalist,* written by Alexander Hamilton, James Madison and John Jay, was published anonymously. In-

deed, the attribution of several of the essays is still in doubt. As Professor Earle points out (*The Federalist,* Modern Library edition (1937), Introduction, p. ix), during the controversy over the endorsement of the Constitution, "The press of the day was submerged with contributions from anonymous citizens." Among those anonymously opposing ratification was New York's Governor George Clinton, who wrote under the name "Cato." (See the introduction by Paul Leicester Ford to the Henry Holt edition of *The Federalist* (1898), pp. xx-xxi.)

Thus, in the early days of our Republic, persons who were or were to become President of the United States, Chief Justice of the Supreme Court, Secretary of the Treasury and Governor of New York did not hesitate to maintain their anonymity in publishing weighty public and political documents.

This practice is still used by public officials. *Foreign Affairs,* the United States' most influential periodical dealing with international policy, has frequently in recent years masked the names of its contributors, carrying leading articles signed simply by single initials, including the famous "X" article, "The Sources of Soviet Conduct," which set forth the Government's policy towards the Soviet Union (*Foreign Affairs,* Vol. 25, Nos. 1 & 4, Vol. 27, No. 2, Vol. 36, No. 1).

The millions of Americans who are members of secret fraternal orders certainly believe firmly in their right to operate anonymously (Schlesinger, *op. cit., supra,* at p. 44). Professor Schlesinger describes them as playing a "positive and continuing role in society" (*Id.,* p. 48).[13]

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[13]A vigorous warning against the growing tendency to limit privacy and force all our activities into the glare of government supervision and public inspection is made by Professor Lasswell "The Threat to Privacy," in MacIver, ed., *Conflict of Loyalties* (1952), pp. 121-140.

E. Anonymity as an Aid to Free Expression

In a number of ways modern society recognizes anonymity as a valuable aid in assuring free expression of opinion. It is standard practice for newspapers to print letters signed with initials or fictitious names. While the editors require that the writer disclose his name to them, they recognize that a freer expression of opinion can be achieved if they do not require public exposure of the writer's identity.

Public opinion researchers similarly accept the fact that some persons will hesitate to express themselves freely and honestly if they think that there is a chance that their names will ultimately be associated with the answers they give. In *Interviewing for NORC* (1945), the National Opinion Research Center, which has conducted surveys for many government agencies, advised its employees (p. 15):

> "A few persons may be reluctant to talk if they feel their names will be taken. You can explain that NORC *never* wants the name of anyone who doesn't want us to have it."

That the loss of anonymity can have a serious effect on free expression of opinion is recognized in the book, *How to Conduct Consumer and Opinion Research,* Blankenship, ed. (1946). The essay on "Measurement of Employees' Attitude and Morale," advises employers to place (pp. 223-4)

> "* * * emphasis on the point that the questionnaires must not be signed, that no one in the company will have access to the answered questionnaires, that there is no means of identifying a particular person's

blank. All of the mechanics of distributing the questionnaire forms and the placing of the answered forms in the ballot box are such as to guarantee anonymity to the employee."

In the same book, the essay on "Trends in Public Opinion Research" describes conclusions drawn by the Office of Public Opinion Research from a comparison of questionnaires answered secretly with others answered by persons who were told that their identity would be known (p. 298):

"Experiments with secret ballots as compared with oral interviews have shown that respondents are not always frank in stating their opinions. An unpopular opinion or one that reflects in any way upon the prestige of the respondent often gets a higher rating in the secret ballot than in oral replies."[14]

In employees' suggestion programs, likewise, it is common practice to set up a system in which the person making the suggestion does not identify himself but receives a numbered receipt from which he may be identified after the suggestion has been considered. In *How To Conduct A Successful Employees' Suggestion System* (p. 9), Ezra S. Taylor rates anonymity as the most important condition for successful suggestion systems.

Underlying all these practices, anonymous polls, letters to the editor and the like, is the well-founded belief that anonymity in the expression of views contributes to the free play of ideas and hence to the ultimate search for truth, the same search for truth that the founding fathers sought to foster by the guarantees of the First Amendment.

Conversely, it is apparent that a society in which citizens are not allowed to engage in political activity free of the watchful eye of the state would be intolerable. As George

[14] The original experiments are reported in detail in Cantril, *Gauging Public Opinion* (1944), Chap. V.

Orwell has shown in *Nineteen Eighty-Four,* such prying is consistent only with totalitarianism.

F. Secret Elections in Democracies

Anonymity, secrecy, privacy, however it may be called, thus has a special value in a democratic society. Nowhere is this seen better than in the act that symbolizes the unity of democratic government and its citizens, the election of public officers. It is not too much to say that the degree of freedom that prevails in a country's election is the surest test of the liberty of its citizens. As Mr. Justice Frankfurter pointed out, concurring in *Sweezy* v. *New Hampshire,* 354 U. S. 234, 266 (1957):

> "In the political realm, as in the academic, thought and action are presumptively immune from inquisition by political authority. It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties either in a state or national election. Until recently, no difference would have been entertained in regard to inquiries about a voter's affiliations with one of the various so-called third parties that have had their day, or longer, in our political history. This is so, even though adequate protection of secrecy by way of the Australian ballot did not come into use till 1888."

This right of "political privacy" (354 U. S. at 267) deserves protection whether exercised through major parties, through minor parties as in *Sweezy,* or through organizations with political objectives such as petitioner.

G. The Absence of Justification for Compulsory Disclosure

We concede, of course, that where a paramount societal interest is to be served or where injury to the community is to be avoided, the right of anonymity must yield and dis-

closure of identity may constitutionally be compelled. But, as this Court held in *Watkins* v. *U. S., supra,* some justification must be shown. There is, the Court said, no "general power to expose where the predominant result can only be an invasion of the private rights of individuals" (354 U. S. at 200). In the words of Mr. Justice Frankfurter, concurring in *Sweezy* v. *New Hampshire, supra,* 354 U. S. at 266-7, the Court must strike a balance between "the right of a citizen to political privacy, as protected by the Fourteenth Amendment, and the right of the State to self-protection."

It is on that basis that the decision in *Bryant* v. *Zimmerman,* 278 U. S. 63 (1928) can be explained (although we do not express approval of that decision). In that case this Court upheld application to the Ku Klux Klan of a New York statute requiring oath-bound organizations, with specified exceptions, to make public the names of their members. The principal basis for the decision was that the legislature could take judicial notice that the Ku Klux Klan operated illegally and had anti-social and anti-democratic objectives.

No such justification exists here. The activities of petitioner are not anti-social or anti-democratic; on the contrary, they are, as we have shown, in furtherance of constitutionally secured rights. The justification accepted as sufficient in *Bryant* v. *Zimmerman* is completely absent here and no other justification has been shown. No justification, we submit, exists, and the order requiring the petitioner to make public its membership records should therefore be reversed.[15]

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[15] We have shown above that petitioner has standing to assert the right to freedom of association on behalf of both itself and its members. Its standing to assert the right of anonymity is even more clear. The right not to have the state require exposure of the names of the members of an organization is one that must be asserted by the organization. A requirement that it be asserted by the individuals affected would require that the individual surrender the right at the same time that he asserted it. See also *Barrows* v. *Jackson,* 346 U. S. 249 (1953).

Conclusion

The State of Alabama has challenged and attempted to limit the right of American citizens freely to associate. Its actions represent a grave threat to all voluntary associations. Such a challenge demands of this Court unambiguous exercise of its historic powers not only to enforce constitutional guarantees but also to keep open the channels for their assertion.

The undersigned organizations therefore respectfully submit that the decision below should be reversed.

Respectfully submitted,

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