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

BRIEF AND ARGUMENT FOR RESPONDENT

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OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Alabama is reported in 91 So. 2d, at page 214.

JURISDICTION

The petitioner's application for a writ of certiorari from the Supreme Court of the United States to review the judgment of the Supreme Court of Alabama, rendered December 6, 1956, under the provisions of Title 28, Section 1257(3), United States Code, Judiciary and Judicial Procedure, has been granted. The judgment of the Supreme Court of Alabama was not dependent upon a decision of any federal question.

QUESTIONS PRESENTED

I.

Has the petitioner, a foreign membership corporation, having neglected to avail itself of the proper remedy in the Alabama courts, and having chosen to remain in contempt, standing to obtain review in this

Court of the orders and decisions of the Alabama courts?

II.

Did the totality of the State's action in seeking an injunction and ouster of petitioner, a foreign corporation, and the procedure used to obtain evidence upon the issues of that action, exceed the powers reserved to the State by the Tenth Amendment?

III.

Did the State of Alabama violate the rights of the petitioner, a foreign corporation, and of its members, guaranteed by the implementation of the First Amendment by the Fourteenth Amendment, in demanding the records and membership lists of petitioner?

STATEMENT OF THE CASE

Upon June 1, 1956, the State of Alabama, on the relation of John Patterson, its Attorney General, filed a bill in equity, against the petitioner, National Association for the Advancement of Colored People, a Corporation, in the Fifteenth Judicial Circuit, Montgomery County, Alabama. The gravamen of the bill was that the corporation conducted extensive intrastate activities in pursuance of its corporate purpose in Alabama without having filed with the Secretary of State a certified copy of its articles of incorporation and an instrument in writing, under the seal of the corporation, designating a place of business and an authorized agent residing in Alabama, as required by Title 10, Sections 192, 193 and 194, Code of Alabama 1940, thus doing business in Alabama in violation of

Section 232 of the Constitution of Alabama 1901, and Title 10, Section 194, Code of Alabama 1940. (R pp. 1, 2, and 3).

The bill of complaint alleged irreparable harm to the property and civil rights of the residents and citizens of Alabama, for which criminal prosecutions and civil actions at law afforded no adequate relief. A temporary injunction and restraining order was requested, preventing the respondent below and its agents from further conducting its intrastate business within Alabama, from maintaining any offices and organizing further chapters within the State. A permanent injunction, in accordance with the prayer for temporary injunction, was also prayed for. Finally, an order of ouster forbidding the corporation from organizing or controlling any chapters of the National Association for the Advancement of Colored People in Alabama, and exercising any of its corporate functions within the State, was requested. (R. p. 2).

On June 1, 1956, the Circuit Court of Montgomery County, Alabama, entered a decree for a temporary restraining order and injunction, as prayed for and further enjoined until further order of the court petitioner from filing any application, paper or document for the purpose of qualifying to do business in Alabama. Service was had upon the corporation, at its offices in Birmingham, Alabama. (R. pp. 18, 19, 20)

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. p. 3)

The State's motion was set for hearing on July 9, 1956. At the hearing, at which petitioner raised generally but not explicitly both State and Federal constitutional objections, (R. p. 6) 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, corpor-

ations, 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, corres-

pondence 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. pp. 20, 21 and 22)

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 temporary injunction to July 25. (R. p. 6)

On July 23, petitioner filed an answer on the merits, denying certain intrastate activities constituting doing business in Alabama. In addition, though denying the applicability of the Alabama statutes, petitioner averred that it had procured the 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. 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. (R. pp. 6 and 7)

On July 25, 1956, the court heard oral testimony, and argument of counsel, the Attorney General testifying that if the petitioner would agree that it was doing business in the State of Alabama, and agree as to the nature of that business, the material sought by motion would not be needed. (R. p. 7) The Court overruled the motion to set aside and ordered the pro-

duction of the items stated in its previous order. Petitioner refused to comply with the court's order, upon which the court adjudged petitioner in contempt, assessed a fine of $10,000.00 against it for the contempt with the further provision that unless the petitioner complied with the order to produce within five days the fine would be increased to $100,000.00 The Court also decreed that if the petitioner complied with the order, it would entertain a motion to remit the fine. The petitioner's motion to dissolve the temporary injunction was not heard in view of its contempt in refusing to obey the order to produce. (R. pp. 7-11)

Upon July 30, 1956, petitioner filed, with the trial court, a motion to set aside or stay execution of the contempt decree pending review by the Supreme Court of Alabama. Petitioner also tendered miscellaneous documents which it alleged to be substantial compliance. At all times the corporation refused to produce the names and addresses of its members. This motion was denied and petitioner then filed a motion in the Supreme Court of Alabama, requesting stay of execution of the judgment below pending review by the appellate court. This motion or application was also denied.[1] On the same day the Circuit Court entered an order adjudging petitioner in further contempt, increasing the fine to $100,000.00, in view of its continued refusal to obey the order to produce. (R. pp. 11-15)

On August 8, petitioner filed a purported petition for writ of certiorari in the Supreme Court of Alabama. After oral argument on August 13, 1956,

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1. 91 So. 2d 220.

the Supreme Court of Alabama, denied the writ on the grounds of insufficiency.[2]

Thereafter on August 20, 1956, petitioner filed a second petition for writ of certiorari.[3] Upon December 6, 1956, the Supreme Court of Alabama denied the writ requested in this petition.

SUMMARY OF ARGUMENT

I.

1. The United States Supreme Court does not review state court judgments based upon an adequate and independent nonfederal ground. **Herb v. Pitcairn,** 324 U. S. 117. The nonfederal basis of the judgment of the Supreme Court of Alabama is real and not illusory. Though **Ex parte Dickens,** 162 Ala. 272, 50 So. 218, holds certiorari the proper method to review contempt, the established law of Alabama is that mandamus is the proper method by which to review an order to produce. **Ex parte Hart,** 240 Ala. 642, 200 So. 783. Petitioner could have raised all constitutional questions in mandamus proceedings but elected or neglected to take such action though it had adequate time, fifteen days, before being required to produce the records. **Ex parte Morris,** 252 Ala. 551, 42 So. 2d 17, is of no avail to petitioner because in that case the writ of certiorari to review a contempt citation for failure to produce records was also denied. In both **Ex parte Morris** and the case at bar the Alabama Su-

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2. 91 So. 2d 221.

3. The grounds alleged by the petitioner in both the first and second petitions for certiorari appear at Record pages 16 and 17.

preme Court considered questions of constitutional law for the future guidance of lower courts but not as the basis of its decision.

2. The procedure to obtain the records was in keeping with established Alabama law. **Ex parte Monroe County Bank,** 254 Ala. 515, 49 So. 2d 161; and **Ex parte Baker,** 118 Ala. 185, 23 So. 996. The requested records were relevant both to issues raised by the motion to dissolve the injunction and those raised by the answer. The documents required could have been used to prepare affidavits on the motion to dissolve, as well as in presenting the case on the merits. **Profile Cotton Mills v. Calhoun Water Co.,** 189 Ala. 181, 66 So. 50. The nature and extent of the corporation's business within Alabama was the heart of the matter because upon it depended the jurisdiction of the court and the type and severity of sanctions, if any, to be imposed upon petitioner. **State ex rel. Griffith v. Knights of the Ku Klux Klan,** 117 Kan. 564, 232 P. 254, cert. denied 273 U. S. 664; and **People v. Jewish Consumptive Relief Society,** 196 Misc. 579, 92 N. Y. S. 2d 157.

3. The procedure of precluding from further proceeding with a case a party, which has refused to produce evidence necessary to determination of the issues therein, is neither novel, unfair or unconstitutional. Federal Rule of Civil Procedure 37(b); **Hammond Packing Co. v. Arkansas,** 212 U. S. 322. Nor is it unusual for a party in contempt to be prevented from further proceeding on the merits. **Jacoby v. Goetter Weil Co.** 74 Ala. 427.

4. Thus, it can be seen that the petitioner's own disregard for Alabama procedure placed it in the po-

sition where it could not test the validity of the order to produce but could either comply or stand in contempt.

5. The size of the fine was not excessive. **United States v. United Mine Workers of America,** 330 U. S. 258; and **Ex parte National Association for the Advancement of Colored People,** 91 So. 2d 214.

II.

1. The police power is one of those reserved to the states by the Tenth Amendment. That amendment is of equal dignity to the rest of the Constitution including amendments preceding and following it. A corporation, being an artificial entity, is subject to the restraints of the police power more than a natural person and has fewer rights. It has no right of privacy or privilege against self-incrimination. Corporations and membership associations are subject to the laws of a state within which they would operate whether that be of their domicile or not. **International Brotherhood of Teamsters, Local 695 A. F. L. v. Vogt, Inc.,** 354 U. S. 284; **Pierce v. Grand Army of the Republic,** 220 Minn. 552, 20 N. W. 2d 489; and **State Ex rel. Griffith v. Knights of the Ku Klux Klan,** 117 Kan. 564, 232 P. 254, cert. denied 273 U. S. 664.

2. It is a legitimate exercise of a state's police power and proper for its attorney general to proceed in equity to enforce laws enacted to protect its people even though the acts enjoined also be crimes. **State Ex rel. Griffith v. Knights of the Ku Klux Klan;** and **People Ex rel. Miller v. Tool,** 35 Colo. 225, 86 P. 224.

3. There is no reason why a membership cor-

poration devoted to propaganda, promotional activities, even good works, and the furthering of the interests of its members or of particluar groups should be exempt from the registration statutes of the states and the penalties for violating them. Such a corporation can commit the same torts as commercial ventures, the same crimes. In these days of mass media, complex and subtle methods of influencing public opinion the state and its people have a real interest in knowing the identity of those who would pool their powers as individuals in corporate form to achieve their ends. Those who act as a corporation must expect to be treated as a corporation.

III.

1. Corporations, associations, and similar organized groups concededly have a right of freedom of speech and press. They do not have a right of privacy or secrecy, **Joint Anti-Fascist Refugee Committee v. McGrath,** 341 U. S. 123, at pages 183 and 184; nor privilege against self-incrimination, **United States v. White,** 322 U. S. 694. They are not entitled to the privileges and immunities of natural persons nor, any more than a natural person, may they assert anothers rights. **Hague v. Committee for Industrial Organization,** 307 U. S. 496, at page 514.

2. The Fourteenth Amendment does not incorporate the first eight amendments. **Adamson v. California,** 332 U. S. 46; and **Wolf v. Colorado,** 338 U. S. 25.

3. Four cases are the basis of petitioner's claim that its freedom of speech and press and those of its members was unconstitutionally abridged. Of these

three, **Watkins v. United States,** 354 U. S. 178; **Sweezy v. New Hampshire,** 354 U. S. 234; and **United States v. Rumely,** 345 U. S. 41, deal with the assertion by a natural person of the right to remain silent concerning his political associations, or subscribers to his publications, or the subject matter of his speeches, when questioned by an investigative committee. The **Watkins** and **Sweezy** cases hold essentially that a person cannot be held in contempt for failure to answer questions which are not relevant to a well defined line of inquiry. The vagueness of the standard by which the person interrogated must judge his right not to answer makes a contempt conviction a denial of due process. The **Rumely** case was not decided on constitutional grounds. **Joint Anti-Fascist Refugee Committee v. McGrath.** has no majority opinion and at most can be construed as holding that an ex parte Attorney General's listing of an organization as "subversive" injures its reputation without granting the hearing which due process requires. It will be seen that in all these cases it was action by the sovereign upon the individual, not the danger of pressure by private persons upon members of an organization, which was held to be a violation of constitutional rights.

Pierce v. Society of Sisters, 268 U. S. 510, holds merely that a statute compelling all children to attend public schools deprives without due process private organizations of the property right to be in the education business.

Petitioner has justified its refusal to produce its records on the mere speculation of injury by private persons to its members. Private action is not state action. **United States v. Cruikshank,** 92 U. S. 542; and **Powe v. United States,** 109 Fed. 2d 147, (C. C. A. 5), cert. denied **United States v. Powe,** 309 U. S. 679.

ARGUMENT

I.

THE JUDGMENT BELOW, BASED UPON STATE PROCEDURE, LEFT NO FEDERAL QUESTION TO BE REVIEWED BY THIS COURT

1. The United States Supreme Court will not review a state court judgment based upon an adequate and independent nonfederal ground. The reason for this rule is obvious. It lies in the division of power between the state and Federal judicial systems. The power of the Supreme Court over state judgments is to correct them only to the extent that they adjudge Federal rights and not to pass upon state court opinions concerning Federal questions which are not necessary to the decisions. **Herb v. Pitcairn,** 324 U. S. 117.

Therefore, before this Court will review a state court case it must determine either that the decision of the state court was based upon a federal ground or that any nonfederal ground for the decision was inadequate by itself to support the state court judgment.

The petitioner attempts to show that the nonfederal ground for the decision of the Supreme Court of Alabama is illusory. It contends that the Alabama Court departed from a long standing State procedure permitting review of contempt proceedings by certiorari. That opinion reveals the error of this contention by citing **Ex parte Dickens,** 162 Ala. 272, 50 So. 218. Respondent does not concede, as petitioner states upon page 2 of its brief, that, because certiorari is the proper method of reviewing a contempt citation, the holding in the case at bar that mandamus was the

proper remedy to review an order to produce was in any way a departure from established State procedure. Rather, by mandamus the aggrieved party can obtain review without the danger of a contempt citation. The petitioner chose another course though it had ample time in which to have filed mandamus proceedings prior to July 25, 1956. The petitioner elected to test this order by refusal to obey thus subjecting itself to contempt proceedings. The Supreme Court of Alabama reviewed those contempt proceedings with a view to determine whether the trial court had jurisdiction of the person and subject matter, whether the proceedings were valid and regular on their face, and whether the lower court had exceeded its authority.

Petitioner, in the jurisdictional statement of its brief on the merits, touches lightly on this facet of the Alabama decision, but in its petition for certiorari relies upon **Ex parte Morris,** 252 Ala. 551, 42 So. 2d 17, **Ex parte Sellers,** 250 Ala. 87, 33 So. 2d 349, and similar cases, to show that the Supreme Court of Alabama used the device of State procedure to preclude review of its decision. Those cases cited by the petitioner fail wholly to support that contention. For example, in **Ex parte Morris,** the Alabama Supreme Court did not grant the writ of certiorari and then affirm the case but rather in the first instance denied the writ. After deciding that Morris' petition showed a direct contempt committed in the presence of the court, that due process was afforded the petitioner, and that no error appeared on the face of the record, the court denied the writ of certiorari, but deemed it advisable that the opinion further exposit the views of the court for future guidance upon problems of this nature. The attention of this Court is called to the parallel in the opinion delivered by the Supreme Court of Alabama

in this case. The court therein denied the writ of certiorari on essentially the same grounds as in **Ex parte Morris,** but in order that the parties might understand its views on the subject, wrote to the merits of the petitioner's constitutional objections. Thus, expressions of opinion on constitutional matters were not necessary to the decision and are not before this Court. The only thing before this Court is the adequacy of the nonfederal grounds of the decision. The Supreme Court of Alabama clearly stated and demonstrated by ample authority that mandamus is the correct and the only procedure to review an order to produce records.[4] Such cases as **Ex parte Sellers,** are not in point, as these cases either deal with a direct contempt or the refusal to obey a court order not reviewable by mandamus.

2. At pages 37 and 38 of the petitioner's brief, it argues that the procedure followed in the trial court was calculatedly designed to place it in a position where it could not obtain a hearing on its motion to dissolve the temporary injunction and ultimately on the merits of the case. Analysis of the order of events rebuts this argument. The motion to produce was granted on notice and hearing. Between July 9 and July 24, there was ample time to have contested the order to produce by mandamus, or to obey.

The records and documents were relevant to proof of the nature and methods of petitioner's business in Alabama. It was proof necessary to determine whether the temporary injunction should remain in effect and whether or not a permanent injunction and ultimately an order of ouster should be granted.

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4. **Ex parte Hart,** 240 Ala. 642, 200 So 783.

It is true that, if objected to, oral testimony is not admissible on a motion to dissolve a temporary injunction, but affidavits are permitted. **Profile Cotton Mills v. Calhoun Water Co.**, 189 Ala. 181, 66 So. 50; and Title 7, Section 1061, Code of Alabama 1940. The names and addresses of petitioner's members were needed for the State's preparation of affidavits in opposition to the motion to dissolve. In this connection, it should be remembered that the petitioner's answer, while admitting some of the State's allegations, denied that it had solicited members for either the local chapters or the parent corporation or that it had organized local chapters within the State (R. p. 7). The Attorney General testified that the records would not be required if petitioner would admit that it was doing business within Alabama and disclose the nature and extent thereof.[5] To this offer the petitioner did not agree.

Since the petitioner had filed an answer and submitted to the jurisdiction of the court, a trial on the merits could have followed immediately, whether or not the temporary injunction was dissolved. Thus, the State needed to examine the corporation's records in the aid of its preparation for trial. It is nowhere the rule that a party may not examine documents to be used in preparation of a case until such time as trial on the merits has commenced in court. The Federal

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5. *Solicitation* of funds or membership within a state is doing business so as to subject a corporation to state regulation and restraint. **People v. Jewish Consumptive Relief Society,** 196 Misc. 579, 92 N. Y. S. 2d 157; **State ex rel. Griffith v. Knights of the Ku Klux Klan,** 117 Kan. 564, 232 Pac. 254, cert. den. 273 U. S. 664; **and New York ex rel Bryant v. Zimmerman,** 278 U. S. 63.

Rules of Civil Procedure contain far reaching discovery procedures. Numerous states, such as New Jersey, have followed the lead of the Federal courts. And the penalties for refusing discovery can be severe. For example, Federal Rule of Civil Procedure 37(b) authorizes default judgment against a party contumaciously refusing to disclose documents necessary and relevant to the issues of a cause. As far back as **Hammond Packing Co. v. Arkansas,** 212 U. S. 322, it was held that when a defendant corporation disobeyed an order to secure the attendance of its officers, agents, directors and emploees as witnesses and refused production of books, papers and documents in their possession, it was not a denial of due process to permit the rendering of a default judgment against it. What some states have prescribed by statute, Alabama permits as a matter of common law.[6] This rule of denying a party in contempt the right to proceed further with a trial pending its purging itself of contempt, even when the flouted order was interlocutory, is recognized in other states. **Henderson v. Henderson,** 329 Mass. 257, 107 N. E. 2d 773.

Lest the action of the Alabama Supreme Court be lightly disregarded as a device to frustrate review by the United States Supreme Court, we reiterate that the corporation had fifteen days in which to have filed a petition for writ of mandamus to obtain review of

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6. **Ex parte Monroe County Bank,** 254 Ala. 515, 49 So. 2d 161; **Ex parte Baker,** 118 Ala. 185, 23 So. 996; **Goodall-Brown and Co., et al. v. Ray,** 168 Ala. 350, 53 So. 137; **Wilkinson v. McCall,** 247 Ala. 225, 23 So. 2d 577; and **Jacoby v. Goetter Weil Co.,** 74 Ala. 427.

the trial court's order to produce before being called upon to disclose its records. During this time petitioner's sole action was to file an answer which carefully avoided describing the character and extent of its activities in Alabama. Yet this answer, together with certain affidavits purporting to show that its members, if known, were subject to pressure by private citizens of Alabama, was offered as the excuse for its refusal to produce its corporate records. It was not until its attorneys had said that those records would not be produced and the corporation was held in contempt that the petitioner attempted to obtain from the appellate courts of Alabama review of the order making it produce its records.

As this Court has so often stated, it is constitutionally barred from reviewing a State court judgment resting on a nonfederal ground. The sovereignty of State's government, so fundamental to our constitutional system requires that this Court confine its review to those cases which inescapably present a federal question. Can it be said after reading the careful analysis of the applicable Alabama law contained in the opinion of the Supreme Court of Alabama in this case and the record on appeal, that the decision of a federal question was necessary to the conclusion to deny the writ? Rather, the petitioner's own inattention to and deliberate disregard of established procedures, similar to those recognized in other jurisdictions, placed the petitioner in its present dilemma.

II.

THE EQUITY PROCEEDING FOR INJUNCTION AND OUSTER WAS A REASONABLE AND WELL RECOGNIZED EXERCISE OF THE STATE'S POLICE POWER.

1. "The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Thus, reads the Tenth Amendment to the Constitution of the United States. Without it that Constitution, the authority by which all branches of the Federal government act, would not exist. It is a provision of equal dignity to all other portions of that Constitution, including those amendments which precede it in order or were adopted thereafter. It is true that in its history judicial interpretation has restricted the sovereign power of the states, but the police power has never been questioned as one of these reserved rights of the states without which they would cease to be sovereign entities. What are the limitations on this police power? That is what this Court must decide if it leaps the initial hurdle of deciding that the decision of the Supreme Court of Alabama in this case was necessarily based upon a Federal ground. In analyzing the extent of the police power of the several states in the context of this case it is helpful to examine what states other than Alabama have done to control the activities of domestic and foreign corporations within their borders.

That a corporation is an artificial entity subject to restraint by the sovereign which grants it life or

which permits it to function within the sovereign's boundaries is axiomatic. That a corporation does not have all the rights of a natural person, because of its artificial character, is also basic law. **Hale v. Henkel,** 201 U. S. 43; and **United States v. White,** 322 U. S. 694.

The petitioner herein would have this Court believe that, because it is a membership corporation which engages in propaganda and political activities and seeks to promote the interests of its members, it is entitled to wear a cloak of not only immunity but invisibility nullifying the constitutional power of the states to inquire into, regulate, and curtail its activities. It makes this claim in the face of the statutory and case law of the state of its origin.[7]

We need not go beyond the New York General Corporation Law, Sections 210, 211 and 219, to see that a foreign corporation, which either does unlicensed business within New York or exceeds the powers which New York permits it to exercise within its borders, is subject to injunction and ouster.[8] Labor unions, which

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7. The New York Membership Corporation Law, Section 10, empowers Justices of the State Supreme Court to pass upon the purpose of membership corporations and disapprove them if they offend either New York public policy or the individual Justice's opinion as to desirability of purpose. **Application of Catalonian Nationalist Club,** 112 Misc. 207, 184 N. Y. S. 132; **In re. General Von Steuben Bund,** 159 Misc. 231, 287 N. Y. S. 527.

8. **People v. Jewish Consumptive Relief Society,** 196 Misc. 579, 92 N. Y. S. 2d. 157.

are certainly entitled to as much consideration as this corporation, are also subject to state restraint.[9]

However, even more strikingly in point with the case at bar, are three cases sustaining the power of the state to regulate another membership corporation whose charter also contains statements of worthy aims and ends, namely, **The Knights of the Ku Klux Klan.** The cases are, **State ex rel. Griffith v. Knights of the Ku Klux Klan,** 117 Kan. 564, 232 P. 254, cert. denied, 273 U. S. 664; **Knights of the Ku Klux Klan v. Commonwealth,** 138 Va. 500, 122 S. E. 122; and **New York ex rel. Bryant v. Zimmerman,** 278 U. S. 63. The petitioner would have it that these cases may be explained on the basis of judicial notice that the Klan is an organization based upon bigotry and committed to violence. Similarly, this Court is asked to take judicial notice of the noble character and purpose of petitioner based upon publications, periodicals and news reports whose accuracy, impartiality and reliability are not subject to the tests usually reserved for evidence admitted in court. If such judicial notice is permitted, an appellate record loses its value and briefs on appeal become a battle of magazine and newspaper opinion.

To return from this digression to the more fundamental issues in this case, the striking similarity of

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9. **Doherty v. Mareschi, et al.,**
59 N. Y. S. 2d 542;
International Brotherhood of Teamsters v. Vogt, Inc.
354 U. S. 284;
Pacific Typesetting Co. v. International Typographical Union,
125 Wash. 273, 216 P. 358.

Kansas' successful action against the Ku Klux Klan to that which Alabama commenced againt this recalcitrant corporation, which would set itself above the law, is immediately evident. The Supreme Court of Kansas outlined, on the basis of a Commissioner's report, the activities of the Klan in Kansas. It sustained the ouster of the Klan, even though it was a membership corporation, while expressly accepting the commissioner's finding that the evidence was insufficient to show that the Klan engaged in violence and intimidation. The Supreme Court of the United States denied certiorari. Thus, despite the somewhat ambiguous conclusion to be drawn from denial of certiorari by the United States Supreme Court there is no ambiguity about the assertion of the right of Kansas to regulate and oust nonprofit membership corporations doing business within its borders. It is submitted that this case alone is sufficiently authority upon which to sustain the initial proceedings in Alabama.

2. Petitioner makes a somewhat halfhearted attack on the validity of the action for injunction and ouster upon the grounds that equity will not enjoin violation of statutes for which there is a criminal penalty. We do not quarrel with the general rule that equity will not aid in enforcement of a penalty nor the rule that equity will not act where there is an adequate remedy at law. But do those rules apply in this case? The fact is that this is not an action to enforce a penalty but rather to forbid the doing of an act which is also a crime. This last equity most certainly will do, as in the case of the enjoining of gambling houses and liquor nuisances even though both gambling and possession of illegal liquors are crimes. In the case at bar, the State had no adequate remedy at law since each act of solicitation of membership constituted a

separate violation of Title 10, Sections 194 and 195, Code of Alabama 1940. The multiplicity of criminal actions necessary to enforce these statutes against such an organization, its officers and agents is self-evident.

The interest of Alabama in protecting its citizens from an abuse of their personal and property rights is found in the declaration of the State policy of Title 10, Sections 192 and 193, Code of Alabama 1940, and the Constitution of Alabama 1901, Section 232. The **Griffith** case sustained the power of Kansas in a similar action to protect the similar rights of the people of Kansas. The power to protect by injunctive process was also sustained in **People Ex rel. Miller v. Tool,** 35 Colo. 225, 86 P. 224.

3. The reason why a corporation is subject to this regulation is that an artificial body, created by the State, is naturally limited by the rules set by its creator. Those who would unite in coporate form and enjoy its benefits must also accept its disadvantages. If they would act through a corporation, they must be prepared to be treated as a corporation. Now how is a membership corporation, devoted ostensibly to good works, political activity, and propaganda, but financed by membership subscriptions and solicited contributions, so different from the ordinary commercial corporation that it should be free from regulation, free from the restraints which the sovereign can ordinarily impose?

It can libel and slander, it can make and break contracts. By its agents it can commit torts or crimes, just as can the most crassly commercial venture. If it does these things, who is to be served, where is he to be found?

If petitioner should be free of regulation and restraint, why should not trade associations, manufacturers associations, advertising firms, all those who deal in public relations, be free of examination into their affairs on the theory that their primary function is to inform the public, to influence opinion and the resulting action, and in many cases, to persuade legislatures to specific ends and the public to particular political action? In these days of subliminal advertising and other subtle and indirect ways of obtaining the desired but not readily apparent ends of various groups, the right of the sovereign to know and the people to know who are these idea peddlers is fully as great as the right to trade in those ideas. In fact, the very right to dissent which the State must not destroy, which is so fundamental to our free society, can be destroyed by the unrestrained action of organizations who, because they claim noble aims and lofty purposes, also claim a constitutional right to secrecy and privacy. Yet the very power of these groups to act in concert in corporate or membership form is granted by the sovereign who most certainly must have the right to see that this power is neither abused nor misused.

III.

THE ORDER TO PRODUCE THE CORPORATION'S RECORDS INCLUDING NAMES OF MEMBERS AND SOLICITORS DID NOT DEPRIVE EITHER THE CORPORATION OR ITS MEMBERS OF THE LIBERTY GUARANTEED BY THE FOURTEENTH AMENDMENT.

In analyzing why the liberties of neither the corporation nor its members have been abridged, we shall discuss, first the constitutional rights of the corporation, second the fact that the corporation may not assert the rights of its members, and third the constitutional rights of those members.

1. At the outset it should be clearly understood what rights and liberties a corporation has, and which it does not have, guaranteed by the Fourteeth Amendment. We concede that a corporation has the First Amendment rights of freedom of speech and freedom of the press. We do not concede that a corporation has a privilege against self-incrimination, or freedom from a reasonable search or seizure to require production of corporate records. **Hale v. Henkel,** 201 U. S. 43; **United States v. White,** 322 U. S. 694; and **Rogers v. United States,** 340 U. S. 367. Nor does the Fourteenth Amendment incorporate the first eight amendments to the United States Constitution. It is only when the state intrusion is so shocking that it amounts to a denial of due process that state action is held to be unconstitutional. **Adamson v. California,** 332 U. S. 46, and **Wolf v. Colorado,** 338 U. S. 25. In this connection the rights of natural persons are of more concern to this Court than those of corporations.

Thus, we come to the rights of a corporation which are secured by the Fourteenth Amendment. Concededly, they include freedom of speech and freedom of press. They do not include freedom of association, a right of privacy, or the right to assert the privilege of others, including members. This Court has held that natural persons alone are entitled to the privileges and immunities of Section I of the Fourteenth Amendment. **Hague v. Committee for Industrial Organization,** 307 U. S. 496. But not even natural persons can invoke the constitutional rights of others. **Tileston v. Ullman,** 318 U. S. 44; and **United States v. Josephson,** (C. C. A. 2), 165 Fed. 2d 82, 89, cert. denied 333 U. S. 838.

2. The cases which petitioner claims support the contention that it may assert the rights of its members or at least may refuse to disclose the names of its members because of possible ill effects upon its operations are four. **United States v. Rumely,** 345 U. S. 41; **Joint Anti-Fascist Refugee Committee v. McGrath,** 341 U. S. 123; **Sweezy v. New Hampshire,** 354 U. S. 234; and **Watkins v. United States,** 354 U. S. 178. By a parlay of these four decisions petitioner attempts to justify a rule that a corporation may conceal the identity of its members if those members, once identified would tend to fall away from membership with a resulting loss of the corporate strength. As was pointed out on pages 14 and 15 of respondent's brief in opposition to the petition for writ of certiorari, this, when studied, is a somewhat involuted concept. Yet it has a deceptive simplicity similar to Decartes' famous dictum "I think, therefore I am." It has the same metaphysical quality of requiring an act of faith as the basis for the syllogism. Their reasoning seems to be: We are an organization of individuals; our individual members have certain constitutional rights, therefore we the

organization have those constitutional rights since we are the mere sum of all our members. This reasoning overlooks the nature of a corporation, which is something more than the mere sum of its individual members. Rather, it is an artificial entity through which the members act and which, because it permits them to shield themselves from certain personal liabilities, is subject to more restraints than a natural person.

It can be seen that Watkins and Sweezy were both asserting individual personal rights of freedom of speech and association. As we interpret the majority opinion in both cases it held that the two men were denied due process when compelled to answer questions concerning their associations and political connections in the absence of a showing that the questions were related to a well defined line of inquiry in which the sovereign had a substantial interest. Certainly, the **Watkins** case, is based upon the fact that the questions were so discursive, the directive of Congress and the investigating body's interpretation thereof so broad that Watkins had no way of telling what he might properly decline to answer and what he could not refuse. Thus, his prosecution was a denial of due process because no clear standard of conduct was established by which he could judge the legality of his actions. With **Sweezy,** the question was similar and the majority opinion seems to hold that the Attorney General's questions were not related to matters entrusted to his investigation by the legislature. Thus, the invasion of Sweezy's personal rights was not warranted and contempt based thereon was a denial of due process. In both cases, even though they sustained the right not to give information, the rights asserted were personal to individual citizens as contrasted with corporations.

Rumley's case involved the assertion of the right not to give certain information concerning persons who subscribed to his publications. No majority opinion sustained his refusal upon constitutional grounds. While Mr. Justice Black's concurring opinion dealt with freedom of the press and his thought was that the official harassment of people who bought Rumley's tracts might injure Rumley's business, to that extent abridging his exercise of freedom of spech and freedom of the press, it is clear that the opinion is concerned with the possibility of harassment of the press by public officials under the guise of obtaining information.

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123, has no majority opinion. The Justices agreed that the Committee had some standing to sue because the act of the Attorney General, in declaring the organization subsersive, injured its reputation naturally causing it to lose membership. It was characterizing it as subversive without a hearing which constituted denial of due process. It is true, that Mr. Justice Jackson expressed the thought that the organizations could assert the rights of their members. He also said, at pages 183 and 184, that corporations, organized groups or associations which solicit funds or memberships had no right of privacy or secrecy. The fact that members were held up to scorn and obloquy did not entitle them to secrecy. This can only be taken as meaning that memberships cannot be kept secret.

Pierce v. Society of Sisters, 268 U. S. 510, cited by petitioner for the proposition that a corporation may assert constitutional rights of others including their rights to free association, deals with none of these. It holds simply that an Oregon statute com-

pelling all children to attend public schools deprived, without due process of law, private organizations of their property rights to conduct schools. The action of the Oregon Legislature directly interferred with that property right.

3. At this point a very important distinction must be made between all these decisions and the case at bar. It is true that an Alabama court has ordered this corporation to reveal the names of its members and solicitors. But the interference, if any, with the rights of the corporation and its members are at best a matter of conjecture. And, in no event, consists of more than exposing of the members to public criticism and possible economic and social pressure by private individuals. Neither the privileges and immunties of the First Amendment nor the rights created by the Fourteenth Amendment are protected against individual as contrasted with state action. **United States v. Cruikshank,** 92 U. S. 542; and **Powe v. United States,** (C. C. A. 5) 109 Fed. 2d. 147, cert. denied **United States v. Powe,** 309 U. S. 679. Mr. Justice Jackson recognized the distinction in **Joint Anti-Fascist Refugee Committee vs. McGrath,** 341 U. S. 123, when he placed his decision that the rights of members were abridged, upon the basis that ex parte listing of an organization as subversive without a hearing resulting in an automatic dismissal of government employees who were members therein deprived these employees of their livelihood wthout due process.

4. The petitioner, at page 40 of its brief, attempts to show that it was denied due process by quoting two excerpts from a speech made by the learned trial judge almost a full year after the proceedings before him in the case at bar. It argues that

because he was opposed to integration, organizations committed to integration of the races could not receive a fair hearing before him. Likewise, might the Daily Worker, an organ of the Communist party, argue that no Federal or state judge could sit upon a case involving that publication, because all such judges must take an oath to uphold the Constitution of the United States; a priori committing themselves as foes of Communism. Such argument, and petitioner uses it to belabor all officials of Alabama in building up a picture of calculated denial of its rights, could be used to develop a sort of Parkinson's law that the more unpopular an organization is, the *greater is its freedom* from control and examination by the sovereign. New York, the petitioner's State of origin, recognizes no such rule. The New York Civil Rights Law, Section 53, compels membership corporations which require an oath as prerequisite or conditions of membership, with certain exceptions, to file a roster of their membership and list of their officers for each year. The constitutionality of this statute was upheld by the United States Supreme Court in **New York ex rel Bryant v. Zimmerman,** 278 U. S. 63.[10] It is difficult to see why Alabama may not obtain, by judicial order, evidence relevant to issues in a proceeding to enforce its corporation laws, similar to that which New York may constitutionally extract from corporations by virtue of a statute.

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10. New York also permits visitorial rights by the Supreme Court over membership corporation by statute: New York Membership Corporation Law, Section 26; and compels production of records by mandamus as a matter of common law. **Davids v. Sillcox,** 297 N. Y. 355, 81 N. E. 2d 353.

CONCLUSION

The petitioner neglected to avail itself of the established procedure of petition for writ of mandamus to review the trial court's order to produce. Therefore, the judgment of the Alabama Supreme Court was not based on any Federal ground and leaves nothing for this Court to review.

The action of the State of Alabama to enjoin and oust petitioner, a foreign corporation, which had violated the Alabama corporation laws, was a well recognized exercise of the police power of the State reserved to it by the Tenth Amendment.

No constitutional rights of either the corporation or its members were abridged by the commencement of an action for injunction and ouster and the requirement that the corporation produce records relevant to the issues in that action.

It is respectfully submitted that the writ of certiorari heretofore issued by this Court should be recalled or in the alternative the decision of the Alabama Supreme Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Edmon L. Rinehart, one of the attorneys for the respondent, The State of Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 16th day of October 1957, I served copies of the foregoing brief in opposition on Arthur D. Shores, 1630 Fourth Avenue, North, Birmingham, Alabama, by placing a copy in a duly addressed envelope, with first class postage prepaid, in the United States Post Office at Montgomery, Alabama, and on Thurgood Marshall, 107 West 43rd Street, New York, New York, by placing two copies in a duly addressed envelope, with Air Mail postage prepaid, in the United States Post Office at Montgomery, Alabama.

I further certify that this brief in opposition is presented in good faith and not for delay.

Edmon L. Rinehart

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