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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956 7

NO. 846—

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

VS.

STATE OF ALABAMA, ex rel. JOHN PATTERSON, ATTORNEY GENERAL

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Supreme Court of the United States

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BRIEF AND ARGUMENT FOR RESPONDENT

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 has applied 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, 1957, under the provisions of Title 28, Section 1257(3), United States Code, Judiciary and Judicial Procedure. (See petitioner's brief, page 2.)

QUESTIONS PRESENTED

I.

Is any constitutional question presented by the decision of the Supreme Court of Alabama, in view of the issues presented to that Court by the petition-

er, its failure to follow prescribed Alabama procedures, and the long standing decisions of the Supreme Court of the United States upon the applicability of the First, Fourth, Fifth and Fourteenth Amendments, to corporations?

II.

Has the petitioner, a membership corporation, having neglected to avail itself of the proper remedy to review the trial court's order to produce, having chosen to stand in contempt of that trial court in asserting the alleged constitutional rights of its members, and having obtained review of the trial court's contempt order, but not reversal thereof, been denied due process of law because its own contumacy has precluded its further proceeding on the merits of the main case, pending its purging itself of contempt?

III.

Has the petitioner, a membership corporation, the constitutional right to refuse to produce records of its membership in Alabama, relevant to issues in a judicial proceeding to which it is a party, on the mere speculation that these members may be exposed to economic and social sanctions by private citizens of Alabama because of their membership?

STATEMENT OF THE CASE

Upon June 1, 1956, the State of Alabama, on the relationship 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, Mont-

gomery County, Alabama. The gravamen of the bill was that the corporation conducted extensive 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.

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 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 expelling 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.

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 respondent corporation, at its offices in Birmingham, Alabama.

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.

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, the court issued an order requiring production of the following items requested in the State's motion:

> "1. Copies of all charters of branches or chapters of the National Association for the Advancement of Colored People in the State of Alabama.
>
> 2. All lists, documents, books and papers showing the names, addresses and dues paid of all present members in the State of Alabama of the National Association for the Advancement of Colored People, Inc.
>
> 4. All lists, documents, books and papers showing the names, addresses and official position in respondent corporation of all persons in the State of Alabama authorized to solicit memberships in and contributions to the National Association for the Advancement of Colored People, Inc.

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

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

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

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

11. All lists, books and papers showing

the names and addresses of all officers, agents, servants and employees in the State of Alabama of the National Association for the Advancement of Colored People, Inc.

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

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.

On July 23, petitioner filed an answer on the merits. In addition, 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.

On July 25, 1956, the court heard oral testimony, and argument of counsel and overruled the motion to set aside and ordered the production of the items stated in its previous order. Petitioner refused to comply with the court's order, upon which the court ad-

judged petitioner in contempt, assessed a fine of $10,000.00 against it as punishment 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 petitioner's motion to dissolve the temporary injunction was not heard in view of its contempt in refusing to obey the order to produce.

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.

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

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1. 91 So. 2d 220.

2. 91 So. 2d 221.

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.

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3 The grounds alleged by the petitioner in both the first and second petitions for certiorari are as follows:

"Petitioner respectfully shows unto this Honorable Court as follows:

1. That the Circuit Court erred in entering its order of July 11, 1956, requiring petitioner to produce certain documents and papers set out therein.

2. That the Circuit Court erred in overruling petitioner's motion to set aside its order to produce.

3. That the Circuit Court erred in adjudging petitioner in contempt and assessing a $10,000 fine against it as punishment therefor.

4. That the Circuit Court erred in punishing petitioner $10,000 for contempt in excess of its statutory authority under Title 13, Section 143 of the Alabama Code of 1940.

5. That the Circuit Court erred in overruling petitioner's motion to set aside and/or modify its order and judgment adjudging petitioner in contempt and/or stay execution of its judgment pending review by this Court.

6. That the Circuit Court erred in adjudging petitioner in contempt and in assessing a $10,000 fine against it as punishment therefor.

7. That the Circuit Court erred in punishing and fining petitioner $100,000 for contempt in excess of its statutory authority under Title 13, Section 143 of the Alabama Code of 1940.

8. That the Circuit Court erred in granting the temporary restraining order.

9. That the Circuit Court erred in failing to dissolve its injunction and in refusing to permit petitioner to register with the Secretary of State after it had tendered compliance with its answer.

10. That all of the errors committed by the Circuit Court and set forth above are in violation of petitioner's right and the rights of its members to due process of law and equal protection of the laws secured under the Fourteenth Amendment to the Constitution of the United States, and violate petitioner's rights under the commerce clause of the Federal Constitution."

ARGUMENT

I.

THE JUDGMENT BELOW BASED UPON STATE PROCEDURE DISPOSED OF ALL QUESTIONS PROPERLY RAISED BY PETITIONER, AND LEFT NO FEDERAL QUESTION TO BE REVIEWED BY THIS COURT.

In asserting its claim that the judgment below employed the device of State procedure to preclude review by the United States Supreme Court, the petitioner attempts to show that the Supreme Court of Alabama departed from a long standing State procedure of permitting review of contempt proceedings by certiorari. That opinion reveals the error of this contention. It is clear that the Alabama Court reaffirmed its rule that certiorari was the proper method by which to review contempt, by citing, **Ex parte Dickens,** 162 Ala. 272, 50 So. 218. The gist of the opinion is that if the petitioner felt aggrieved by the trial court's order to produce its proper remedy was a petition for writ of mandamus in the Supreme Court to compel the trial judge to set aside his order. By this means the aggrieved party can obtain review without the danger of a contempt citation. But petitioner chose another course, though it had ample time in which to have filed mandamus proceedings prior to July 25, 1956. Petitioner chose to test the order to produce by a refusal to obey based upon vaguely designated constitutional rights. The Supreme Court of Alabama then reviewed the contempt proceedings with a view to determining if the trial court had jurisdiction of the person, subject matter and whether it

had exceeded its authority. Its greatest preoccupation was naturally with the nature of the contempt, civil or criminal? It needs no extensive argument or citation of authorities to show that its conclusion on this point was sound. See **Ex parte King,** 263 Ala. 487, 83 So. 2d 241; and **United States v. United Mine Workers of America,** 330 U. S. 258.

But the petitioner asserts that because, in **Ex parte Morris,** 252 Ala. 551, 42 So. 2d 17, Morris, who had refused to produce names of Klu Klux Klan members before a grand jury, obtained a review of a contempt citation by petition for certiorari, the National Association for the Advancement of Colored People, has in some mysterious fashion been aggrieved in the case at bar. However, it can readily be seen that Morris' contempt was occasioned by his refusal to answer a question before a grand jury upon direct orders of a judge. He had no opportunity to test the propriety of the questioning by petition for mandamus but because of the immediate action of the judge in sentencing him to jail he was left to the remedy of certiorari. It is otherwise, with petitioner herein who had sixteen days in which to file his petition for mandamus to review the order to produce.

In any event, in both, **Ex parte Morris,** 252 Ala. 551, 42 So. 2d 17, and the case at bar, the Alabama Supreme Court considered the rights of the petitioners to refuse to produce their records on the grounds of privilege against self-incrimination and security against unreasonable searches and seizures. While citing Federal cases to demonstrate that these rights had not been violated, the Alabama court correctly treated them as matters of State law, in view of the holding

of the United States Supreme Court, that the due process clause of the Fourteenth Amendment does not incorporate the first eight amendments to the United States Constitution. **Adamson v. California,** 332 U. S. 46; and **Wolf v. Colorado,** 338 U. S. 25. Especially, the Fourth Amendment has been held not to be a monitor upon State rules concerning searches and seizures unless the State action complained of was so shocking as to amount to fundamental unfairness. **National Safe Deposit Company v. Stead,** 232 U. S. 58. It is true that such cases as **Wolf v. Colorado,** 338 U. S. 25, contain language supporting the proposition that the Fourteenth Amendment implements the Fourth Amendment as against State action. A reading of the majority opinion at page 27, dispels this notion:

> "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in the 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples.
>
> Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it

would run counter to the guaranty of the Fourteenth Amendment. . . ."

From the above it is evident that the court did not decide that the Fourth Amendment in its detailed entirety was an inhibition upon State action but rather that arbitrary oppressive police action is a violation of due process.

Insofar as petitioner's asserted rights under the Commerce Clause of Article I, Section 8 of the United States Constitution are concerned, it is submitted that the extent and nature of its activities in Alabama are the determinant facts for deciding what limitations the State might place upon those activities. That the State has power over foreign corporations, even the power of ouster, is established law. See **State Ex rel. Griffith v. Knights of the Klu Klux Klan,** 117 Kan. 564, 232 P. 254, cert. denied 273 U. S. 664; and **Asbury Hospital v. Cass County,** 326 U. S. 207. The petitioner takes the anomalous position that its activities are protected by the Commerce Clause and then refuses the sovereign the right to examine its records to ascertain the applicability of that Clause to those activities and the corresponding limitation, if any, upon the State's power of control. A similar argument was made in **Oklahoma Press Publishing Co. v. Walling,** 327 U. S. 186. This court refused it and held that the Wages and Hours Administrator had the authority to examine the newspaper's records to determine whether or not the Wages and Hours Laws applied to the company and whether it was violating them.

We finally come to the privilege and immunities clause of the First Amendment, as protected by the Fourteenth Amendment, a right so vigorously as-

serted by the petitioner in its application to this Court. At no point does it appear that these rights, if petitioner own any such, were urged by it before any Court of Alabama. A multitude of cases lay down the rule that the United States Supreme Court will not assume jurisdiction when a Federal question has not been properly presented in the Federal court. One such case is **Herndon v. Georgia,** 295 U. S. 441, in which Mr. Justice Sutherland said at page 442:

> "It is true that there was a preliminary attack upon the indictment in the trial court on the ground, among others, that the statute was in violation 'of the Constitution of the United States,' and that this contention was overruled. But, in addition to the insufficiency of the specification, the adverse action of the trial court was not preserved by exceptions pendente lite or assigned as error in due time in the bill of exceptions, as the settled rules of the state practice require. In that situation, the state supreme court declined to review any of the rulings of the trial court in respect of that and other preliminary issues; and this determination of the state court is conclusive here. . . ."

More recently, the case of **Williams v. Georgia,** 349 U. S. 375, turned upon the fact that this Court considered that the petitioner therein had raised a Federal question in the manner prescribed and permitted by Georgia procedure but that the Georgia court refused to consider the question raised. The dissenting opinion took a contrary view of the Georgia procedure but all Justices agreed that for the United

States Supreme Court to consider a Federal Constitutional question it must have first been properly raised in the state court in accordance with state procedure.

II.

The petitioner herein argues that it was denied due process of law by the totality of the State action in the case to date. It is not entirely clear whether the basis of this contention is the denial to the corporation of a fair hearing or alternatively that because the present state of the case leaves it out of business in Alabama, and precluded from further contest in the Alabama courts pending its purging itself of contempt, it has been denied certain rights guaranteed by the privileges and immunities clause of Section 1 of the Fourteenth Amendment. In addition, the corporation seems to be asserting certain First Amendment rights of its members and members of the Negro race in general. It is somewhat difficult to detect the individual ingredients in its melange of asserted rights and grievances.

The course of petitioner's argument, if we may change our metaphor, seems to be that, because the State incidentally to an equity action against it, demanded the names of its members possibly causing harrassment and discouragement of these members by private individuals, possibly causing them to discontinue membership in the corporation, possibly leading to its ultimate weakening and demise, the rights of both the members and the corporation to freedom of speech, assembly, and redress of grievances have been abridged by the State. Petitioner alleges that it is the main effective voice of Negro citizens attempting to assert their constitutional rights. Thus, it argues its

rights depend upon its members and its members' rights upon it. They are together a sort of legal flagellatae spawning interdependant constitutional rights. Tangential to the circle of this main argument is the assertion of privilege against self-incrimination and freedom from unreasonable searches and seizures.

In building up the picture of the State, acting through its Attorney General and its courts to deprive petitioner of its rights, request is made that the Court take judicial notice of what is called "public information." Petitioner's brief, pages 19 through 25. While we do not agree that the elasticity of judicial notice stretches to include all the various hearsay, opinions and speculation included on these pages, if it is petitioner's contention that the great majority of people in Alabama favor segregation, to that one fact we accede.

However, in addition, the impression is given by the footnotes on pages 23 through 25, of petitioner's brief, that somehow orthodox Alabama procedure was departed from so as to place the corporation in the position of having to disclose its membership ere it could proceed to a hearing on its motion to dissolve the temporary injunction and ultimately on the merits of the case. This impression is false. The motion to produce was granted on notice and hearing. Ample time was given to contest it by mandamus or to comply. The material requested was relevant to proof of the nature and method of petitioner's business in Alabama. Such proof was relevant to determine whether the temporary injunction should remain in effect and whether or not a permanent injunction, and finally an order of ouster should be granted. While it is true that generally speaking oral testimony is not taken on

a motion to dissolve a temporary injunction, ex parte affidavits of parties 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. Furthermore, the course which the trial would take was uncertain. Whether or not the temporary injunction was dissolved, a trial on the merits could have followed immediately. In that event the State needed to examine the corporation's records to prepare its proof of the allegations of the bill of complaint. While petitioner admitted in its answer some of the State's allegations it denied solicitation of members for either the local chapters or the parent corporation, or that it had organized local chapters within the State. See petitioner's brief, page 8. It would be a strange rule that a party may not examine documents to aid in the preparation of a case until such time as trial on the merits has commenced in court.

While the defenses to production of the requested records of privilege against self-incrimination and freedom from unreasonable searches and seizures are peripheral to the petitioner's arguments, a word concerning them is in order. That neither of these rights is infringed upon by such an order to produce was established as early as **Hale v. Henkel,** 201 U. S. 43, and carried down to **United States v. White,** 322 U. S. 694; and **Rogers v. United States,** 340 U. S. 367.

This brings us to the central question raised by the petitioner. Does a corporation have the right to refuse to disclose the names of its members on the speculation that they may be exposed to public scorn and

dislike and to possible unfair economic and social pressures by private citizens? The answer is no.

First of all, neither the privileges and immunities 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,** 109 Fed. 2d 147, (C. A. 5), cert. denied **United States v. Powe,** 309 U. S. 679.

Secondly, and most important, a corporation may not assert the privileges and immunities of its individual members. Whether this be considered merely as a statement of the rule that a party may not assert rights personal to another party or more important a statement that the rights to freedom of speech; assembly and redress of grievances are reserved to natural persons, it is still the law.

This Court has held:

> "Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for 'citizens of the United States.' Only the individual respondents may, therefore, maintain this suit." **Hague v. Committee for Industrial Organization,** 307 U. S. 496, at page 514.

See also **International Ladies Garment Workers Union, A. F. L. v. Seamprufe, Inc.,** 121 Fed. Supp. 165 (D. C. E. D. Okla.); and **Local 309 United Furniture Workers of America, C. I. O. v. Gates,** 75 Fed. Supp. 620 (D. C. N. D. Ind.).

These cases would seem to dispose of all questions, even those raised by the line of cases cited on page 18 of petitioner's brief. Of these only, **United States v. Rumely,** 345 U. S. 41 and **Pierce v. Society of Sisters,** 268 U. S. 510, would seem to support the petitioner's right to assert rights on behalf of its members or to claim that injury to its members was injury to it. The other cases are distinguished by the fact that the person or company asserted its own right. For example, **Burstyn, Inc. v. Wilson,** 343 U. S. 495; **Pennekamp & the Miami Herald Publishing Co. v. Florida,** 328 U. S. 331, deal with direct censorship of the press. **Thomas v. Collins,** 323 U. S. 516, involves an attempt at prior censorship of a speech by a labor organization. The right asserted was individual and personal. **Pierce v. Society Sisters,** 268 U. S. 510, can be explained on the theory that the denial of the right of individuals to send their children to private schools eliminated by state action the means of livelihood and property rights of the private schools of Oregon. It is distinguishable from the case at bar, on the grounds that the statute operated on the individuals to prevent their doing business with private schools, and thereby directly destroyed a property interest of those schools. **United States v. Rumely,** 345 U. S. 41, is also distinguishable. It deals principally with freedom of the press. It is true that the court vindicated Rumely's refusal to disclose the names of the persons to whom he sold his publications. There was no majority opinion holding that his refusal could be based upon constitutional grounds. Mr. Justice Black did say that the freedom of the press was involved but it is clear that what concerned him was harassment of the press by public officials rather than the sensitivity of Rumely's readers who might be exposed to public gaze.

The words of Mr. Justice Jackson in the **Joint Antifascist Refugee Committee v. McGrath**, 341 U. S. 123, at pages 183 and 184, are particularly apposite to the case at bar:

> "I agree that mere designation as subversive deprives the organizations themselves of no legal right or immunity. By it they are not dissolved, subjected to any legal prosecution, punished, penalized, or prohibited from carrying on any of their activities. Their claim of injury is that they cannot attract audiences, enlist members, or obtain contributions as readily as before. These, however, are sanctions applied by public disapproval, not by law. It is quite true that the popular censure is focused upon them by the Attorney General's characterization. But the right of privacy does not extend to organized groups or associations which solicit funds or memberships or to corporations dependant upon the state for their charters. The right of individuals to assemble is one thing; the claim that an organization of secret undisclosed character may conduct public drives for funds or memberships is another. They may be free to solicit, propagandize, and hold meetings, but they are not free from public criticism or exposure. If the only effect of the Loyalty Order was that suffered by the organizations, I should think their right to relief very dubious."

The petitioner has attempted to make of this a segregation case. It is not. It involves merely the power

of a state to compel foreign corporations operating within its borders, whatever their purpose, whether they be profit or non-profit, to conform to the laws applicable to all foreign corporations enacted for the protection of the citizens of Alabama. The merits of the State's proceeding in equity to enjoin and oust the corporation from Alabama are not before this Court. Perhaps they never will or should be. That the petitioner is entitled ultimately to a hearing on the merits of the case is basic to our law. But it is the petitioner's own recalcitrance which has prevented its proceeding to the merits. The rule of law forbidding a party in equity who is in contempt of court continuing further with a case is neither novel nor unfair. It makes the best of sense that a party who refuses to divulge information necessary to the conduct of a case should be prevented continuing with it. The petitioner, on mere speculation of injury by private individuals to what it construes to be the rights of its members, refuses to deliver to the court a list of that membership. It also arrogates the constitutional rights of its members to itself, asserting a dubious infringement based not on State but on individual action. If such resistance to the orderly process of a trial is permitted, corporations and particularly membership corporations will be permitted to place themselves above and outside the law. If we may be permitted a supposition, no more far fetched than some of those in petitioner's brief, we pose the situation of a prominent labor leader, under investigation, who refuses to produce records of his Union, even its membership, on the grounds that those members might be incriminated or perhaps because of the odious reputation of the particular Union held up to public scorn with a resulting fall in Union membership and Union power.

Can it be said that a Union official could refuse these records on such a basis. The answer is no. How then does the petitioner's case differ? It does not. For these reasons there is no merit in its refusal to obey the order to produce issued by a court of Alabama, having jurisdication of both person and subject matter.

CONCLUSION

For the foregoing reasons this petition for certiorari should be denied.

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 10th day of May 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
Assistant Attorney General of Alabama
Judicial Building
Montgomery, Alabama