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

Petitioner,

—vs.— No. 91

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

Respondent.

Washington, D.C.
January 15, 1958

The above-entitled matter came on for oral argument pursuant to notice,

BEFORE:

EARL WARREN, *Chief Justice of the United States*
HUGO L. BLACK, *Associate Justice*
FELIX FRANKFURTER, *Associate Justice*
WILLIAM O. DOUGLAS, *Associate Justice*
HAROLD H. BURTON, *Associate Justice*
TOM C. CLARK, *Associate Justice*
JOHN M. HARLAN, *Associate Justice*
WILLIAM J. BRENNAN, JR., *Associate Justice*
CHARLES E. WHITTAKER, *Associate Justice*

APPEARANCES:

ROBERT L. CARTER, ESQ., *20 West 40th Street, New York, New York, on behalf of Petitioner.*

EDMON L. RINEHART, ESQ., *Assistant Attorney General of Alabama, on behalf of Respondent, the State of Alabama.*

PROCEEDINGS

MR. CHIEF JUSTICE WARREN: The next case is Number 91, *National Association for the Advancement of Colored People, a corporation*, versus *State of Alabama, on relation of John Patterson, Attorney General.*

THE CLERK: Counsel are present.

MR. CHIEF JUSTICE WARREN: Mr. Carter, you may proceed.

ORAL ARGUMENT OF ROBERT L. CARTER, ESQ., ON BEHALF OF PETITIONER

MR. CARTER: If the Court please:

This cause is here from a judgment of the Supreme Court of Alabama, dismissing and denying a petition for a writ of certiorari filed by petitioner, seeking to review in the Alabama court an adjudication of contempt and a fine in the sum of 100,000 dollars, on the failure of petitioner to submit its membership list pursuant to an order of the Circuit Court of Montgomery County.

The issues arose in the following manner: On June 1, 1956, the Attorney General filed a bill of complaint in the Circuit Court of Montgomery County, alleging that petitioner was doing business in Alabama without complyin with the Foreign Registration Act of Alabama, and alleging in dition various other illegal acts. The two that they named were e fact that—the allegation was that—petitioner had given mone, s to two persons to induce them to apply to the University of Alabama to test its policy of excluding Negroes on the basis of race.

THE COURT: Your State's New York, State of incorporation?

MR. CARTER: Yes, sir.

THE COURT: When you say "incorporation," would you mind being a little bit more specific?

MR. CARTER: We're incorporated in New York.

THE COURT: Under—

MR. CARTER: —Under the New York Membership Law.

THE COURT: That's what I meant, the particular kind of associative body.

THE COURT: Under what law did you say?

MR. CARTER: I didn't hear you.

THE COURT: Under what law?

MR. CARTER: New York Membership.

THE COURT: Membership?

MR. CARTER: Yes.

THE COURT: You're nonprofit?

MR. CARTER: It's the corporations act.

THE COURT: Well, that makes it [Inaudible],[1] does it not? It gives you New York citizenship?

MR. CARTER: Yes, sir.

THE COURT: What had you done in Alabama? What did they charge you with failing to do in Alabama?

MR. CARTER: They charged that we had failed to register as a foreign corporation, and that we were doing business in Alabama without first complying with its Act which requires foreign corporations to submit their articles of incorporation to the Secretary of State and designate a place of business.

THE COURT: Every state requires a foreign corporation, as a condition precedent to doing business therein, to domesticate by obtaining a certificate through the procedures provided to do business there.

MR. CARTER: Precisely.

THE COURT: And you came here on whether or not failure is a contempt?

MR. CARTER: Yes.

Now in addition to this failure, they charged that we had done other illegal acts. And as I started to indicate, the acts that they charged were that we had given money—they alleged that we had given money to two persons to induce them to enroll at the University of Alabama to test its policy; that we had furnished

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[1]Because of an imperfect taping system and aging tapes, some passages are inaudible.

counsel for these persons; and that we had incited and aided the Montgomery citizens to boycott the bus lines when they were attempting to secure unsegregated seating.

On the basis of these allegations alone, and without a hearing and with nothing further, we were without notice enjoined from operation. The State asked that we be enjoined from all organizational activities. We were so enjoined *ex parte*. And in addition, although this was not requested by the State, the court enjoined us from taking any steps to comply with the law requiring foreign corporations to domesticate.

Now we then filed, on July 2nd, a motion to vacate or dissolve the injunction and temporary decree, which is the procedure that one follows under Alabama law. On July 5th, the State came in with a motion requiring us to produce pre-trial production of various documents, including a list of our members and various other items. This motion was heard on July 9th; and on July 9th, or July 11th, the court ordered us to produce these various items, including the list of our members. The specific things that the court asked are cited on pages six, seven, and eight of our petition to file here. The court asked that each of these items be produced on July 16th. But it subsequently extended the time for us to produce until July 25th, and then simultaneously continued the hearing on the motion to dissolve to July 25th.

We then filed an answer on July 23rd in which we admitted that we had chartered branches in the State; that we had been in Alabama since 1918; that we had not registered under the Act because it was our good-faith belief that we were not required to do so; that we had not furnished any moneys to anybody to enroll in the University of Alabama, although we did admit that we furnished legal counsel and aid to Miss Lucy to prosecute her suit; that we had not participated in the Montgomery situation, but that we had given financial assistance and legal aid to the persons who were charged with violations of state law for refusing to ride the buses segregated. In our answer we said that, although we do not feel that we are obliged to obey this law, we attach the requisite forms and ask the court to rescind its order and vacate its order barring us from registering, so that we could comply with the law. In other words, we indicated that we were willing to waive whatever contentions we had on that ground.

With this answer, we filed a motion to vacate the interlocutory order of the court requiring us to produce, on constitutional grounds and on the grounds that the issue—the getting of these documents—was no longer in issue because of the fact that we had made a full answer, and this was a legal question in terms of whether we were or were not doing business.

But on our refusal to—the court refused to grant this motion. And on our refusal to give over the names of our members, the court adjudged us in contempt and fined—

THE COURT: Did you tender to the court all the documents except the membership list?

MR. CARTER: Not yet, Your Honor. We didn't do that at the time.

THE COURT: Did I—I want to be sure I heard you, Mr. Carter—did you express readiness to file?

MR. CARTER: Yes, sir. We not only expressed readiness; we had secured the forms and attached them to our answer.

THE COURT: All the things?

MR. CARTER: Yes, we did.

THE COURT: Was there anything—were there items in the forms which you were unwilling to—

MR. CARTER: No. The only thing that the form requires, Mr. Justice Frankfurter, is that you file your articles of incorporation—which, incidentally, the State already had; they were attached to the complaint which was filed by the Attorney General—and that you designated your place of business, which the State knew because it so designates it in the bill of complaint; and indicate an agent to serve. These things we did.

THE COURT: You mean, Mr. Carter, that ordinarily a foreign corporation need do no more than that to domesticate in Alabama?

MR. CARTER: As we understand the law.

THE COURT: You say you filled out those forms?

MR. CARTER: We secured them from the Secretary of State and attached them to our answer, indicating—

THE COURT: Filled out?

MR. CARTER: We filled them out.

THE COURT: And you admitted that you did have a place of business in Alabama?

MR. CARTER: We have a regional office in Birmingham, which was maintained by us; yes, sir.

THE COURT: Did you admit that you were doing business in Alabama?

MR. CARTER: Our contention, as I attempted to make it, Your Honor, our contention was that we do not think that we are doing business in Alabama. We do not think that we're doing business in Alabama and we do not think that this law applies. But we were willing to waive that and to comply with the law. And therefore we proceeded to attempt to domesticate. And we indicated that we would file these forms if the court would permit us to. The court had indicated that we could not even make any attempts to.

THE COURT: Mr. Carter, did this filled-out form bear the name of any person—any signature?

MR. CARTER: It was the—the form was filled out by the organization. I think it has to be signed by the president.

THE COURT: Was it—what I want to know: Did, on that form, there appear the name of any person or persons?

MR. CARTER: There appeared the name of the president, I believe. And I can't be sure of this, but let me say this: Whatever was required in terms of the form, we did. And I'm not really clear as to whether or not the name appeared, but as I remember the name of the president of the corporation has to be signed.

THE COURT: My question has pertinence, as you doubtless will have inferred, from what is required and what may be required and what may not be required in the disclosure. That's why I'm asking it.

MR. CARTER: As I indicated, when we continued to refuse to divulge the names of our members, we were fined—adjudged in contempt and fined 10,000 dollars, with the proviso that if we did not comply within five days the fine would be 100,000 dollars.

Now on July 20th—

THE COURT: Was it—was there any phrasing by the judge; was there any statement of what the 10,000 dollar fine was for or against?

MR. CARTER: Well, I think he cited—the order of the judge, if the Court please, is in the record. All I can say is that the judge indicated that for our refusal to submit the names as of July 25, we were fined 10,000 and adjudged in contempt. If we did not comply—

THE COURT: That is, if you continued to disobey—that's what the 100,000 dollars was for?

MR. CARTER: That's correct. Now, that's cited at—

THE COURT: The fine must have been for refusal.

MR. CARTER: Yes, sir; that's cited at page 13 of the appendix, 13A of the appendix to the petition for a writ of certiorari, in the record.

Now on July 30, which was four days afterwards, we came into the trial court with a motion to vacate, stay, or set aside the contempt order. And at that time, Mr. Justice Burton, we tendered compliance with the order of the court, with the exception of the portion of the order requiring us to give the names and addresses of our members, and the portion of the order which asked us to submit all of our files, all of our letters, all of our correspondence, and so forth, which we contended was burdensome and would completely disrupt our operation.

THE COURT: Well, you were purging yourself of all contempt except on the members list?

MR. CARTER: Yes.

THE COURT: [Inaudible]

MR. CARTER: I didn't hear you, sir.

THE COURT: The fine was imposed, was it not, the 10,000 dollar fine, on the 25th of July?

MR. CARTER: Yes, sir.

THE COURT: But you were given until the 30th of July, were you not—

MR. CARTER: Yes, sir.

THE COURT: —in which to comply?

MR. CARTER: Yes, sir.

THE COURT: And on the 30th you did tender all the materials required by the order to be produced except the names of your members?

MR. CARTER: Yes, sir; and as I indicated, another item which required us to submit all of our files and so forth, which we could not comply with. We indicated that to the court. This was just physically impossible for us to do, and we so said this in our motion.

THE COURT: That motion was denied on the next day, the 31st of July—

MR. CARTER: No, sir; that was denied on July 30th.

THE COURT: Oh, same day?

MR. CARTER: Yes, sir.

THE COURT: [Inaudible].

MR. CARTER: Yes, sir.

THE COURT: In the interlocutory decree—that was *ex parte*, wasn't it?

MR. CARTER: No, sir; the—

THE COURT: No *ex parte* proceeding—

MR. CARTER: The temporary restraining order—

THE COURT: Well now, didn't that restrain you from doing any business?

MR. CARTER: That restrained us from doing business, yes.

THE COURT: Altogether?

MR. CARTER: Yes, sir.

THE COURT: It wasn't merely a dislocation, but you were restrained from doing any business.

MR. CARTER: Yes, sir.

THE COURT: By an *ex parte* proceeding?

MR. CARTER: Yes, sir, from doing any business; from soliciting; from maintaining any chapters; from holding any meetings in Alabama; and from carrying on any activities in Alabama. That was the *ex parte* proceeding.

THE COURT: That tied you completely. That immobilized you until the restraining order came on, if it did come on, for a hearing; is that right?

MR. CARTER: Yes, sir. It never came on for it.

THE COURT: It never came. But did you continue under the restraint of that until the contempt proceeding?

MR. CARTER: We did. We obeyed the order. That is, we notified our affiliates that the order was in force, and we had no meetings, and we did nothing.

THE COURT: What I want to know is: When did the obligation of that restraining order cease?

MR. CARTER: The restraining order is still in effect.

THE COURT: But the restraining order continued to run and runs 'til this moment.

MR. CARTER: Yes, sir, because of the fact that—because we are in contempt—under Alabama law we have no right to proceed on the merits of the restraining order. Our motion to dissolve was never heard, so that the restraining order has been in effect, *ex parte*, since June the 1st, 1956.

THE COURT: Let me see if I understand that. According to Alabama law—whether decision or statute doesn't make any difference—according to Alabama law a restraining order putting you, for the time being, out of business completely, continues and has not been reviewed or has not been considered with a view to setting it aside or making it permanent, because in the meantime, in the meantime the State moved for disclosure and you did not fully satisfy the requirement for disclosure granted by the judge. You offered some compliance, but not all of it. He thereupon cast you in contempt, and that, as it were, suspended any action on the restraining order except that the restraining order still restrains you. Is that the situation?

MR. CARTER: That's the situation precisely.

THE COURT: What happened to the provision requiring the payment of the fine? Was that stayed or something?

MR. CARTER: The provision with respect to the—the State has made no effort to collect the fine. We don't have—the fact of the matter is—we have no funds in Alabama and there is some question as to whether or not under the conflict rules, Alabama could collect the money. But I think that Alabama has accomplished its purpose, which was to get us out of business and to put us out of Alabama. The State has not proceeded to try to collect.

THE COURT: Your motion to dissolve was never heard?

MR. CARTER: Well when we filed our motion to dissolve on July the 2nd, it was set down for hearing on July 17th. On July 5, the State comes in and says for us to disclose our members. On July 9th, that was heard and granted. When we refused at the hearing, on our objections and so forth, the court continued the hearing and the time for us to comply, and then continued the hearing on the motion to dissolve so that it would be behind the hearing on the question of whether or not we were to comply with the order.

THE COURT: In effect, to say: We'll not hear it unless you comply with the order?

MR. CARTER: That's right; that's the exact result.

THE COURT: Let me ask you this: Under Alabama law, suppose you were to pay the 100,000 dollars. Suppose you continued in recalcitrance and disobedience, never purged yourself by performance, but paid the fine. Is the restraining order, the motion to dissolve, now appealable?

MR. CARTER: Well, I would say—

THE COURT: In short, there is this extensive restraining order. In the meantime, the State asks for some disclosure, and you feel there are certain things you shouldn't disclose and you stand pat on that. Does that mean you have to live under that restraining order continuously?

MR. CARTER: Apparently it's so, Your Honor, because it may well be that if we were to pay the 100,000 dollars that we would be considered purged for contempt. But then we would be ordered to comply with the order, and we would be found in contempt again, and so the whole thing would go on.

THE COURT: You mean the discovery order?

MR. CARTER: Yes, the discovery order; yes sir. The discovery order, the interlocutory order.

THE COURT: Mr. Carter, is this a civil contempt order that is purgeable, or is it an outright fine as to a criminal contempt?

MR. CARTER: The Supreme Court of Alabama has held that it is civil contempt.

THE COURT: And is purgeable?

MR. CARTER: Beg your pardon?

THE COURT: And therefore is purgeable?

MR. CARTER: The Supreme Court of Alabama has held that it's civil contempt. If it were criminal contempt, the fine could only be fifty dollars. So that the supreme court has held—we contended under the law of Alabama that, and some of the cases of the supreme court, that this should be considered as criminal contempt and the fine fifty dollars, but in this opinion the supreme court disagreed—and held that it is civil contempt.

THE COURT: Well, 100,000 dollars—this isn't a bargain. You don't say you can either obey or pay us 100,000 dollars. It isn't that kind of a thing.

MR. CARTER: No, sir.

THE COURT: I can't imagine that.

MR. CARTER: Well, on July 10, if I can recapture the sequence of events, this motion was denied. We then went to the Supreme Court of Alabama with a motion to stay or set aside the order of the lower court pending review on certiorari, pending the filing and disposition of a petition for certiorari in the supreme court.

THE COURT: This was to set aside the order of contempt?

MR. CARTER: That was to hold the order of contempt, to set it aside—rather, to stay further proceedings or set it aside, until we had an opportunity to file a petition for writ of certiorari in the Supreme Court of Alabama.

The Supreme Court of Alabama on July 31st—we had a hearing before the court—ruled that the only way for the supreme court to review and test adjudication was on certiorari, but that since we had not filed a petition for certiorari that it did not consider that it could interfere with the action of the court insofar as the contempt adjudication was concerned. At that point, and even before this decision was handed down, the circuit court issued its second order of contempt, which found that we had failed to comply within five days and found us in further contempt and fined us for 100,000 dollars.

On August the 8th, we filed a petition for writ of certiorari in the Supreme Court of Alabama. This was denied as insufficient, after hearing on August the 13th. We filed another petition on August 20, and that petition was—the opinion was handed down, which is in the record here.

THE COURT: What was the ground of insufficiency on the first petition for cert?

MR. CARTER: Well, Mr. Justice Harlan, I am not clear. I think it was technically that we had failed to put in the petition certain allegations which we set forth fully in our brief. They held that we hadn't technically complied with their rules.

Now in its opinion on December 6th, the Supreme Court of Alabama refused to grant the petition for writ of certiorari on the grounds that, if we had desired to seek a review on the merits of the order to disclose, the interlocutory order to disclose, that the proper method for us to have sought such a review was by a petition for a writ of mandamus. That on certiorari—adjudications of contempt on certiorari—that the court is concerned only with jurisdictional matters; that it has to find that the order was void on its face; that there is no jurisdiction of the parties, or that contempt was not in fact committed, or that the citation was in some way insufficient. And the court found jurisdictionally and so forth, that this case met all these requirements and therefore, that

the circuit court had the authority to fine them for contempt and had jurisdiction; and in addition, even though it said we don't have to, the court went to the merits of the order and held that on the merits the court below had the authority to issue the order itself.

Now, we therefore feel that at the very outset of these proceedings we are met with the question of whether this Court has jurisdiction, and we think that it unquestionably has. We take that position, as we have indicated in our brief, under the authority of *Rogers* versus *Alabama.*

THE COURT: Mr. Carter, will you clear me up on this: You read the supreme court's opinion as saying initially that this should have been by way of mandamus, not certiorari?

MR. CARTER: To raise the issues that we want raised, yes, sir.

THE COURT: Yes. Then, after having decided that the circuit court did have jurisdiction, treating it as within those limits under certiorari, it then went on to deal with the merits. Is that to say that the merits were dealt with as if you had applied for mandamus?

MR. CARTER: No, the court—I intend to take the position that that's what happened. But in all fairness to the Surpeme Court of Alabama and in all honesty so far as its decision was concerned, it said that, although we don't have to go further, we can stop after we find that the court had jurisdiction—

THE COURT: My question is: They could have stopped. But the court in fact went on and dealt with the merits. Now, in dealing with the merits, did the court do what it would have done had you come up by way of mandamus?

MR. CARTER: We think so.

THE COURT: But the court said it was doing it because you didn't file mandamus.

MR. CARTER: The court said that: We don't have to do anything further, but it went on and said that, on the merits of the order, the order is valid and should be sustained. We think—in answer to what Mr. Justice Brennan said—we think that, in effect, the court indicated that if we had come up on mandamus, it would have sustained the order on the merits. But that's the substance of the opinion.

THE COURT: Now Mr. Carter, if you conscientiously and unquestioningly concluded that under Alabama law this should have

been raised on mandamus, if that was your clear conviction, then you would think that the state court decided it on a state ground, wouldn't you—if you thought that?

MR. CARTER: No, sir. The reason I say no, sir, is because: If I remember the decision of this Court in *Thomas* versus *Collins* where this same kind of thing is done, I think that this Court said that, even though the court indicated that it did not have to go into the merits, since it did go into the merits the issue was here.

THE COURT: If they said: We decide it. But I thought you had said in answer to Mr. Justice Brennan, you had the honesty to say that they said that we don't—although we talk about this thing—we really go on that ground.

MR. CARTER: Well, that's true.

THE COURT: Now, if you thought that that's the ground they went on, and if you thought they were right about that ground, then it would be a state ground?

MR. CARTER: Well, yes.

THE COURT: Isn't that right?

MR. CARTER: Yes.

THE COURT: All right. But your contention is that that isn't so?

MR. CARTER: Yes.

THE COURT: All right.

MR. CARTER: As we indicated in our petition for certiorari, we think that what Alabama has done is to seek here to unfairly defeat our right to have this case reviewed, the Federal rights which we think are here, under the guise of local practice.

THE COURT: And by that time it's too late to proceed by mandamus.

MR. CARTER: We think so, although, Mr. Justice Burton, there are some decisions in Alabama where the person has come up to the supreme court on a petition for a writ of certiorari or a petition for a writ of mandamus, and the court has said, you've taken the wrong proceeding but we will treat it as the proper proceeding, as petition for a writ of mandamus. They did not do it here.

THE COURT: Well, Mr. Carter, if we were to agree with your interpretation of what was done here, would you then now have to argue the question you're about to argue? This is not an ultimate ground—that they unfairly, under the guise of state practice, defeated your right to a hearing?

MR. CARTER: That's right.

THE COURT: We don't even get to it if we agree with your first one.

MR. CARTER: Yes, sir.

THE COURT: In Alabama are petitions for certiorari ever treated as petitions for mandamus and decided on that basis by the supreme court?

MR. CARTER: Well there is a case, the only case I know of quite frankly, which was decided in which an Alabama—I think it was in a divorce action. It went to the Supreme Court of Alabama on a petition for writ of mandamus. The court held that this should have been on contempt, on a petition for certiorari, but since you've asked for "such other and further relief," we're going to treat it as a proper petition. And I think I can cite that case for you. It is *Armstrong* versus *Green*, which is cited at 60 Southern Second 834. We do not cite it in our brief.

THE COURT: Your contention is that a fair reading of Alabama cases makes clear that as a matter of fact on certiorari it does go beyond the mere technical questions of jurisdiction?

MR. CARTER: There's no question.

THE COURT: That's your position?

MR. CARTER: Yes, it is.

THE COURT: And since that's Alabama law in other cases, they can't refuse it in a case involving a Federal right; that's your position?

MR. CARTER: That's our position. That under Alabama law the same kind of questions which we have here, which go to the validity of the order disobedience of which led to the citation of contempt, and which raised constitutional questions involved—Alabama has decided those cases on a petition for a writ of certiorari from contempt. And in fact, we go further. Insofar as we understood Alabama law, this was the customary way in which issues of this kind were raised and treated. So that we think that under the—we've cited the cases which we think are in point in our petition for a writ of certiorari in Alabama law, and we think that the Court has jurisdiction.

Now before I go into the argument on the merits, I think it's best for me to try to recapitulate what I think are the orders which are before this Court which ought to be reviewed. We think that the temporary restraining order which is involved in this case,

which barred us from all activities and in fact ousted us from the State and barred us from complying with the law; the interlocutory order requiring us, among other things, to disclose the identification and the addresses of our members; the first adjudication of contempt and the fine of 10,000 dollars, which was entered on July 25; the second adjudication of contempt and the fine of 100,000 dollars, which was issued on July 31; and the order and judgment of the Supreme Court of Alabama denying our petition for writ of certiorari.

THE COURT: How about the proceedings for contempt?

MR. CARTER: I didn't hear you, sir.

THE COURT: How about their affirmance of the proceedings for contempt?

MR. CARTER: Yes, sir. I meant that when I said the order and judgment of the Supreme Court of Alabama in this case, in this opinion here.

THE COURT: That is the one thing that is actually here under your proceedings, isn't it?

MR. CARTER: Yes, sir. That opinion is here under our proceedings.

THE COURT: That's what we affirm or reverse.

MR. CARTER: That's right.

THE COURT: Not the rest.

MR. CARTER: We think that the rest—

THE COURT: It may be involved.

MR. CARTER: We think that the rest is here, and if permitted I would like to indicate how in a moment. It is our contention that the entire proceedings in Alabama are void; that the Alabama authorities had no authority and no power to oust us from the State; that we have been deprived of the right to carry on our lawful activities pursuant to a temporary restraining order, the order to disclose the list of our members, and these contempt adjudications.

We contend that the order requiring us to disclose the list of our members is a denial of our right, the right of the corporation and the right of its members, to free speech and freedom of association, and it's protected by the First Amendment. We contend that if we had disclosed the list of our members, that they would have been subjected to possible harm and threats and fears. We

further contend that the punishment for contempt and the fines issued were so vindictive that they, in and of themselves—that, in and of itself, constituted a denial of due process; and that the atmosphere in Alabama, which was one of open hostility to our organization and its members, that this had so insinuated itself into the proceedings in the court that we think the whole proceedings below were in effect a perversion of the judicial process.

Now with respect to the free speech contention, it's our view that, as an organization whose purpose is to seek to improve the status of Negroes in America and to remove color discrimination, that we have pursued this objective in a lawful manner, and that we are entitled and our members are entitled to associate together to pursue this objective, and that we have the protection of the Constitution of the United States in so doing.

Now it is true that under the present status of affairs in Alabama that at the present time our aims are at variance with state policy. But the aims and the objectives of the organization, which are to remove racial and color discrimination from American life, are in accord with the rights, privileges and immunities guaranteed under the Federal Constitution. And although Alabama may desire to maintain segregation and so forth, we think that we have a right to pursue our objective of the removal of segregation, even though it be at variance with the state policy; and that the state policy in this regard has no affect whatever.

Now, insofar as our members are concerned and the right of the organization to do this, it is our belief that under the decisions of this Court, that our members and the organization are entitled to pursue these objectives free and unfettered from any state control, absent compelling justification. We think that's what the decisions in this Court hold, and we think that has been repeated in the two latest decisions that we know of on the subject, decided last term—*Sweezy* and *Watkins*.

Now we do not contend, of course, that the State may not control the organization or may not limit its activity somewhat. But we do contend that where, as here, First Amendment rights are being invaded that the balance has to be struck between the necessity for the regulation and the freedom which we feel we're entitled to have. Alabama has offered no justification whatever in any paper filed in this case to warrant the restraints issued or to warrant the order with regard to our members. There is no necessity, no need that has been shown as to why the Attorney General desires to know who our members are. No purpose would be served by it. In fact, what would happen, insofar as we are concerned with this, is that the State is treading on a ground which it has no right to tread.

THE COURT: If I might find out the answer to this question: Do you claim that it was not within the power of the trial court, in sustaining this motion to produce, to require you to give the names and addresses of your members? Not within his power? Was that relevant, in other words, to the lawsuit pending before the court, as to whether or not you were doing business there, and was it within the power of the trial court so to order?

MR. CARTER: We think it was not. We think not only was it not relevant; we think that the trial court had no authority to order this disclosure, because of the fact that our contention is that the right of our members to associate together—the organization to associate together—is protected from enforced disclosure to any state authority. This is our contention.

Now, on the question of relevance—which we think is not a basic question—but on the question of relevance: In the light of our answer, in which we had admitted that we had the kinds of operations—that we had been carrying on, what we had been doing—the character of our operation not only in Alabama but throughout the United States; the question of who our members were had nothing and no relevance whatever to the question which was purportedly before the court, as to whether or not we were doing business. And besides that, when we offered to register and offered to waive our right to object to Alabama saying whether we were or were not doing business—if there had been any relevance we submit that it was lost at that point. There was no issue before the court to which the identification of our members had any relevance whatever.

Does that answer your question?

THE COURT: Yes, I think so.

MR. CARTER: Now it's our feeling that the only purpose of this order to disclose was in order that the Alabama courts and the Attorney General was in fact seeking to use this so that we would be placed with two, what we consider unconstitutional, conditions: Either we have to comply with the order to disclose and therefore submit to a violation of our right of free speech and right of free association; or we risk contempt and we are ousted from the State, as we were, and never get an opportunity to test the merits of the order.

Now, in our view the respondents have sought to utilize the subversion cases and *Bryant* versus *Zimmerman*, which we think have no relevance whatsoever in this case. We're not subversives. There's no allegation that we were subversives. There's no allegation, in fact, in the pleadings that we have done anything illegal

other than that we have been in Alabama—according to the State's complaint—without registering. And we think that these purposes here, because in those cases where the Court felt that the state might require, the Federal Government might require some invasion of free speech, that in those instances the Court found that there was some justification for it, which we contend of course it cannot find in this particular case. We feel that the—and we think that the record shows—that Alabama was using its Foreign Corporation Registration Act in these proceedings as a cloak to require conformity in the State on the issue of segregation as opposed to anti-segregation.

THE COURT: Mr. Carter, I'm not sure that I know your position on the question of the duty to file the certificate with the secretary of state, if that's the official. Suppose that was all that was in issue here; what would be your position?

MR. CARTER: Well, we don't think it is in issue any longer. We don't think it is in issue.

THE COURT: That's because you proffered the signing of it? That's because you were ready to file that?

MR. CARTER: Yes.

THE COURT: So that isn't before us, then?

MR. CARTER: We don't think so.

THE COURT: You offered to file the—pay the charges, the fees, registration fees, and so forth—did you, at the same time?

MR. CARTER: Yes, sir; we offered to comply so far as the law was concerned.

THE COURT: The reason why states want to have foreign corporations, so-called, file their certificates is only in order to protect their own citizens for various reasons, so as to know whom to sue.

MR. CARTER: Yes.

THE COURT: Now, you're a membership corporation which means you're doing business without profit and therefore the restrictions or the qualifications in New York are different from what they are for a business. If you're ready to file and if the State has a right—there's nothing in the Federal Constitution to bar Alabama from saying you must file a certificate, because if you are engaged in any kind of activity, you have an office; you rent something; you may owe the landlord; or the conditions may

be in such order, that order that a licensee may come in and fall and sue somebody—and they have a right to know whom to sue, who is responsible. Is that right?

MR. CARTER: That's right.

THE COURT: So that there is a distinction, and I'd like to put it to you, between requiring—I'm not saying what the legal consequences are—there is a distinction between Alabama's right to say: You give us the names of your officers, and: You give us the names of people scattered all over Alabama who support your cause—isn't there?

MR. CARTER: I think so. I think that all Alabama requires for persons to domesticate is that they file their articles of incorporation, which lists the persons that are incorporated and, I believe, the members of the board of directors.

THE COURT: The responsible people.

MR. CARTER: That's correct.

THE COURT: You have no objection to that, do you?

MR. CARTER: No, sir; we don't—we offered to comply. And the reason that I think that all of this—even if we take the position and concede that Alabama had the right to request us to do that—we think that they had no authority to use this as a jumping-off ground to do the things that it has done. And we say this for this reason: The law in Alabama requiring foreign corporations to domesticate is to do precisely what you've indicated. Now technically, admitting that we were doing business, technically only were we in violation because of the fact that Alabama knew that we had a Southeast Regional Office. The fact of the matter, they attached as an exhibit to their complaint—they served the complaint on us there, and we submitted to the State's jurisdiction. There is no indication at all as to between 1918 and 1956—and we have had affiliates and been doing the same thing in Alabama during that period of time, 1918 to 1956—that there was ever any effort by any Alabama citizen to sue the corporation which was defeated because we did not comply.

THE COURT: Well, but you don't argue here, do you Mr. Carter, that the failure to enforce the law for a period estops the sovereign from enforcing it?

MR. CARTER: We don't argue that at all. We do think that it raises some presumption that this irreparable harm—that's with no other contention—that this irreparable harm which the state alleged, did not in fact take place.

THE COURT: Did the Alabama trial courts have legal authority to impose under the law of Alabama some penalty of whatsoever kind for the failure to comply, within the time prescribed, with an order to produce?

MR. CARTER: You mean the order to produce the names and addresses of our members?

THE COURT: Yes, did the Alabama trial court have the power to impose some penalty for failure to comply with the order to provide the members list?

MR. CARTER: Well, assuming that the order was a valid order, Mr. Justice Whittaker—

THE COURT: Yes, yes.

MR. CARTER: —they had, they would have the power under the contempt, if we disobeyed it. As I understand Alabama law, if we disobey that order as any other order, we're in contempt of court; and the court has the power to seek to enforce it by a contempt adjudication, fine, et cetera. But we don't think that they—I don't know of any other power that they had in terms of the sort that you're referring to. That's assuming that it was a valid order. But we don't concede that it was a valid order, and that's our position.

THE COURT: Mr. Carter, may I get a little more light from you? It is Alabama law, you say, that when a—what do you call that? A restraining order is outstanding, if you don't obey it, if you don't obey it and therefore can be thrown into contempt, you can't raise the validity or the scope of the restraining order? Is that right? That's what you say is Alabama law?

MR. CARTER: Well, if at any time in the proceedings, as I understand Alabama law—and I think that the Attorney General concedes this—if at any time in the proceedings as a result of this order we are put in contempt, then the whole proceeding is aborted, stopped. Whatever has happened remains. Now, I would suspect that the Attorney General would then have the right to obtain a default judgment, and which we'd then perhaps make this appeal on.

THE COURT: But you say that—

MR. CARTER: But we cannot do anything—

THE COURT: But you say that that ordinary provision of Alabama law suspending a restraining order does not bar this Court from saying that you were thrown into contempt for disobeying a

restraining order that exceeded the constitutional speed limit?

MR. CARTER: Yes, sir.

THE COURT: In that they prohibited you from doing business when there was no relation between that protection given to Alabama and any interest of its; in short, that there was no possible irreparable damage that required such an extreme restriction of your rights. Is that right?

MR. CARTER: Yes, sir.

THE COURT: Although on a restraining order in other instances that might be all right.

Now secondly, you say that you were thrown into contempt because you disobeyed a bill for discovery, whatever it's called, one of the features of which was the disclosure of your membership, and that Alabama had no right to exact from you.

MR. CARTER: Yes, sir.

THE COURT: Are those the two chief—are those the two things? What else is there that you complain of?

MR. CARTER: Well, we—

THE COURT: As far as I understand, those are the two things.

MR. CARTER: We think that the contempt itself is so outrageous that--

THE COURT: You mean time fine?

MR. CARTER: I mean the 100,000 dollar fine. We think that that's in excess.

THE COURT: Now, what do you say to the decision of this Court that obedience is due to an order even if a court may later be found to have improperly issued the order?

MR. CARTER: As I understood that, that was the distinction that this Court made between criminal and civil contempt; and we have obeyed the temporary restraining order, so that we have not—there was no public defiance of the Alabama court. We disobeyed the order ordering us to disclose because we thought that this was the only way we could preserve our rights.

THE COURT: So that you're not within the *Lewis* case.

MR. CARTER: No, sir.

THE COURT: In that you didn't snap your fingers at the injunction, at the injunctive part of it.

MR. CARTER: That's right.

THE COURT: But you were ordered to produce, and you say you were ordered to produce something that they constitutionally had no right to ask you to produce.

MR. CARTER: That's right.

THE COURT: Do I correctly understand you to say to Mr. Justice Frankfurter that you're complaining about the temporary restraining order—

MR. CARTER: Yes, sir.

THE COURT: —as well as the finding of contempt?

MR. CARTER: Yes, sir.

THE COURT: Well, the particular provision of that restraint—

MR. CARTER: We think that the court below had no—that the court in effect acted arbitrarily, ousted us from Alabama; it had no jurisdiction, no authority to do this under the basis of this record. We think further—if I may just finish—we think further that the Supreme Court of Alabama sustained the authority of the court to issue this temporary restraining order, even under the theory of the contempt which it had because it said that there had to be jurisdiction in order for—it could have reviewed jurisdiction on certiorari. So the Supreme—I'm sorry.

THE COURT: Something's bothering me. I'm asking you why you object to the temporary injunction; there's no temporary restraining order issued here, it's a temporary injunction.

MR. CARTER: Except that they call it a temporary—

THE COURT: [Inaudible] by the trial court, except by a motion to dissolve which was never heard; and that all that's here would be the issue of (1) whether or not you were properly cited for contempt and fined.

MR. CARTER: The Supreme Court of Alabama had to necessarily, we think—we raised the issue of the temporary restraining order in that court. It held that the court below had jurisdiction to do what it did. Now in so doing, we contend that it had to go to the question of whether the court had the right to issue the temporary restraining order. Otherwise it would have to have held that the order to produce was void. We think that this was very definitely before the court; that not only is the order to disclose and the contempt before the court—but to go back to the initial thing that started it—the temporary restraining order itself. And our

contention is that all of these matters are here and that they should be disposed of by this Court.

MR. CHIEF JUSTICE WARREN: Mr. Rinehart?

ORAL ARGUMENT OF EDMON L. RINEHART, ESQ., ON BEHALF OF RESPONDENT, STATE OF ALABAMA

MR. RINEHART: Mr. Chief Justice, members of the Court:

Mr. Justice Whittaker's question is what I would like to concern myself with at the outset because it goes to the very heart of the case of what this Court has to review.

Now the opinion of the Supreme Court of Alabama deals with the Alabama law on certiorari, and the limited review which that application or petition for that particular remedial writ is limited to—that is, jurisdiction of the person, jurisdiction of the subject matter, the regularity of the contempt proceedings; for example, whether there was a correct citation, whether there was even a hearing for this contempt. All of those things will be looked at on the face of the record. That is all that you get by certiorari, and that's all this court looked at.

It is true, and we do not deny that the court then went on and discussed certain constitutional questions—not all the constitutional questions which Mr. Carter has discussed here, but certain of them—such as the question of a corporation's privilege against self-incrimination; whether you can raise the rights of persons, in other words, whether certain of these rights are personal rights and you may not assert the right of another. Those things were discussed, but they were not made the basis of a decision. They said mandamus was the proper way in which to review the order to produce, and that a review of that order to produce was not before the court.

And I would like to now enter upon a—I hope not too lengthy—discussion of the common-law writs of mandamus in Alabama. It is the established law of Alabama that the review of an interlocutory order of a court of whatever nature is, by writ of mandamus—"petition," I should say—for writ of mandamus—*Ex parte Hart*, which is cited in our brief; it is also cited in the opinion of the court. This is—I'm reading now from the record, transcript of the record at page 25—"An order requiring defendant to produce evidence in a pending cause may be reviewed on petition for mandamus.—*Ex parte Hart*, 240 Ala. 642. . ."

There's no lengthy discussion of the use of mandamus in that opinion. It was merely assumed that that was the proper way.

And it has always, to my knowledge, been the proper way to review an order to produce. For example, other types of interlocutory orders in a pending criminal proceeding: the State made what amounted to a type of motion to have the defendant examined, sent to the Tuscaloosa Hospital for mental examination to determine his present sanity or his sanity at the time of the alleged offense. The trial court refused to make—to send the defendant there, as a denial of certain constitutional rights, which are not relevant. The law of Alabama is that when you have an order of that nature, fundamental to the future conduct of the proceedings, that it should be tested by petition for writ of mandamus. The State in fact applied for the writ, and they also say that it's still pending—not whether it's the wrong remedy, but the question of whether we're entitled to a writ; whether the order is unconstitutional.

Now the orderly—this isn't one of these springs, these traps for the unwary that have been criticized at all—this is a very orderly way to proceed in these matters and a very logical way to proceed in these matters because what happens, as in this case: On the 11th of July there is an order to produce at a future time. What is the remedy? File a petition for a writ of mandamus in the Supreme Court of Alabama; and they can test every single constitutional question concerning the justification of that order and the questions of its relevancy. All of those questions may be gone into.

But this petitioner didn't choose that path. He waited until the eleventh hour—I'm a little ahead of myself—I should say he waited until the 23rd of July and he filed an answer. Now, that answer—I must disagree with counsel for the petitioner—is a rather odd type of answer, in that he said, "Well we do maintain an office and we do have a couple of employees there. We don't think we have to register, but we would be willing to register." But they never really come out and say, "We're doing business in Alabama." And that is an extremely important issue, despite the tender of compliance with the registration statute.

THE COURT: It's a lot more than registration; it's compliance. Domestication in Alabama is far more than registration.

MR. RINEHART: The statutes on that are set out in petitioner's brief at page 35. They are—there is more than that; and of course, even compliance with registration means you can't exceed whatever powers you have; you can't run counter to Alabama's laws. All of those things are involved.

THE COURT: Well Mr. Rinehart, those statutes at 35—do I read

them accurately—that Section 192 requires the filing of a certified copy of articles of incorporation under seal and so forth, and signed by the president and the secretary designating at least one known place of business and an authorized agent or agents residing thereat, that is, within the State. Now that's all, isn't it? Anything else?

MR. RINEHART: There's a very small filing fee.

THE COURT: Yes, ten dollars or something like that.

MR. RINEHART: As a matter of fact, that's one of the important questions and the reason for the relevancy of the documents requested, because the gravamen or the theory of the State's case is not merely, "You ought to do it now regardless of what you've done in the past, and you can pay your petty little fee here and do this and go and sin no more." We think that the State has—I didn't wish to get to this, but—we think that the State has a power to exclude—

THE COURT: Well what I was interested in at the moment—this is all that the organization was required to do to domesticate, as we've been using that word?

MR. RINEHART: That is correct, as far as just coming in. When a corporation first comes to Alabama or decides they want to, they come in and they file these papers. I think that they are—

THE COURT: I'm sure it must be true in Alabama—I know it is in New Jersey—that very often foreign corporations who have the same obligations in my State as they do in yours, may be quite a while before they make these filings. That must be so in your State too, isn't it?

MR. RINEHART: I have no detailed information on that. We would take the position that they should do that before they start business.

THE COURT: Oh, I know; the Secretary of State in New Jersey takes the same position. But I'm sure that a great many of them don't get around to do it for some time. They don't all do it the first day they show up.

MR. RINEHART: I can't answer that question directly. I simply do not have the information.

THE COURT: Well, are you making a point of the fact that there was a delay here?

MR. RINEHART: A great delay, a many years delay.

THE COURT: Whatever it was, whatever it may be, you make it a point?

MR. RINEHART: Yes, we're making that—it's one of the most important matters in the case once we get to the question of whether the whole merits of the case are subject to review—yes, we do.

THE COURT: Was this corporation notoriously doing business in the State?

MR. RINEHART: I would say yes, sir.

THE COURT: And they'd been notoriously doing business for a good many years.

MR. RINEHART: I can only speak of my own knowledge, which would at least go back for several years, two or three years at a minimum.

THE COURT: And probably before that.

MR. RINEHART: Yes. In fact, the petitioner admits that they have taken certain activities for a great many years but denied, essentially, that that was doing business in Alabama.

THE COURT: I know that they do that. But from the point of view of the importance, to you, of their disobedience—from the State's point of view—to file for the certificate and to apply for it. Isn't that right?

MR. RINEHART: Yes.

THE COURT: All I'm saying is that, if they've been doing a notorious business as I should think we could take judicial notice of, State officials ought to have this knowledge; and that would have some bearing upon whether, overnight, they need to put them out of business by a restraining order.

MR. RINEHART: I think that would be correct if we ever got to the motion to dissolve the temporary restraining order, which I don't think we ever do get to, really.

THE COURT: Mr. Rinehart, one last question about this: This statute speaks of designating a known place of business and an authorized agent. Authorized for what?

MR. RINEHART: Service of process.

THE COURT: So that the statute has the single purpose, doesn't it, to have a place at which the officer of the State, required to

serve process upon it, knows where it can be reached and upon whom to make service?

MR. RINEHART: That is the most important—

THE COURT: That is the purpose of the statute?

MR. RINEHART: That's the purpose of this statute. I should like to point out that there is a constitutional provision. It is not merely a statutory provision. And in fact the constitutional provision is held to be self-enabling. So it's a question of whether you can look at these and say you have everything, though the statute doesn't say why it is—pardon me—the constitutional provision, Section 232, doesn't say what it's purpose is except to protect people—

THE COURT: There's nothing unusual about this.

MR. RINEHART: No.

THE COURT: I think every one of the 48 states has an identical statute, doesn't it?

MR. RINEHART: There's a question of franchise taxes involved, also, which they are supposed to—to get an exemption from certain taxes, you must establish the nature of your corporation, too. And of course we're not making a great point of that in this particular case. Rather, we—

THE COURT: Mr. Rinehart, if a corporation is delinquent in complying with the law, is there any authority in anyone in the State to prohibit them from complying with the law when it's called to their attention?

MR. RINEHART: There is no such statutory authority.

THE COURT: Well, is there any authority?

MR. RINEHART: We think the authority can be found in *State ex rel. Griffith* against *Knights of the Ku Klux Klan*, a Kansas case.

THE COURT: A Kansas case?

MR. RINEHART: Yes, sir, Your Honor.

THE COURT: Well, what I am getting at is this: Has it ever been declared to be the law of Alabama that anybody in the State can prevent them complying merely because they were delinquent?

MR. RINEHART: There is no case law and no statutory law, either.

THE COURT: No case or statutory law. Well now, then I suppose we'd have to go to what laws we have. And I notice here that

on page 35 of the brief for petitioner that you just called our attention to, that there are certain penalties prescribed for not complying and for doing business without complying. If that is true and the State has set those penalties and there's no other statutory law and no judicial law, aren't those the only penalties that you can exact?

MR. CHIEF JUSTICE WARREN: I think you might as well answer that in the morning. We'll adjourn.

MR. RINEHART: Yes, Your Honor.

[Whereupon, argument in the above-entitled matter was recessed, to reconvene at 10:00 o'clock a.m. on the following day.]