

OCT 14 1957

JOHN I. FEY, Clerk

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.

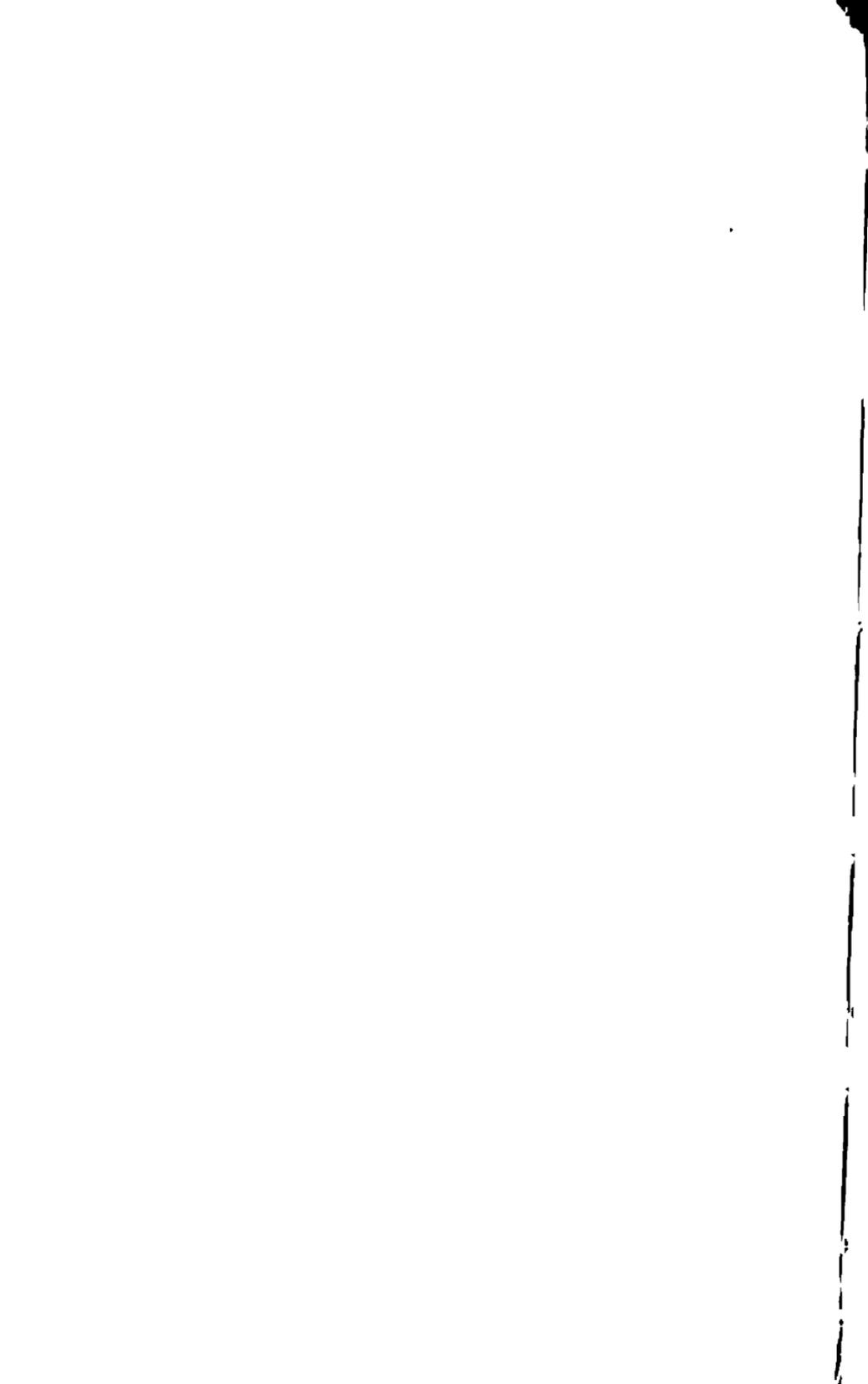
STATE OF ALABAMA, Ex rel. JOHN PATTERSON
ATTORNEY GENERAL

RESPONSE TO MOTION FOR LEAVE TO FILE
BRIEF AS AMICI CURIAE

JOHN PATTERSON
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IN THE
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RESPONSE TO MOTION FOR LEAVE TO FILE
BRIEF AMICI CURIAE

The State of Alabama, in response to the motion for leave to file a brief amici curiae, of the following organizations: American Jewish Congress; American Baptist Convention, Commission on Christian Social Progress; American Civil Liberties Union; American Friends Service Committee; American Jewish Committee; American Veterans Committee; Anti-Defamation League of B'nai B'rith; Board of Home Missions of the Congregational and Christian Churches; Council for Christian Social Action of the United Church of Christ; Japanese American Citizens League; Jewish Labor Committee; National Community Relations Advisory Council; United Synagogue of America; and Workers Defense League, opposes that motion.

It is inadvisable to permit, at this stage of the proceedings, the introduction of matters in the form of emotional and highly colored statements of opinion such as appear in the movants' brief, at pages 2 and 3 thereof. In fact, the movants have waited to file their motion until a third of the respondent's time to answer petitioner's brief has run. Paragraphs (2) and (3) of Rule 42, Revised Rules of the Supreme Court of the United States, when read together, indi-

cate that the motion for leave to file a brief *amicus curiae*, should be made in time for the brief to be filed within the time specified in paragraph (2) thereof. Thus, the motion for such leave was not presented timely within the meaning of that Rule. The tardiness of its presentation is further evident when it is seen that respondent would need additional time to prepare a brief or briefs answering those of both petitioner and the *amici curiae*. Thus, would the calendar of this Court need rearrangement, the prevention of which is one of the reasons for the terms of Rule 42.

Furthermore, with regards to American Jewish Committee; Anti-Defamation League of B'nai B'rith; Council for Christian Social Action of the United Church of Christ; National Community Relations Advisory Council; and United Synagogue of America, we are constrained to point out that none of these five organizations attempted at any time to obtain the consent of the State of Alabama to their joining in or filing a brief *amicus curiae* in this case, prior to the service of the motion now before the Court.

In addition, Rule 42, (3), Revised Rules of the Supreme Court of the United States, indicates that an applicant for leave to file an *amicus curiae* brief should show that the facts and law of the case have not or will not be adequately presented by either party to the case. While the movants state that they intend to show and, in fact, do urge that the State of Alabama denied petitioner due process of law, a study of petitioner's brief indicates that denial of due process is the basis of its demand for review of the decision of the State courts. That the movants have little relevant new material to offer is apparent from

the fact that their brief, at page 7, adopts the statement of the question presented, set forth in petitioner's brief, at page 2.

The real basis for the movants' application seems to be a belief in the quantitative rather than the qualitative theory of appellate argument. Like the oath helpers of Anglo-Saxon and early Norman England, movants subscribe to the theory that if enough people affirm a particular doctrine it must, a fortiori be the truth. It is submitted that the legislature is the proper forum in which weight of numbers should make itself felt and that the courts should be loath to permit additional parties with mere speculative interest to introduce complicating matter into the issues which the parties to an action have drawn already for themselves.

It is, therefore, respectfully requested that the motion of all movants for leave to file a brief *amici curiae* be denied.

Respectfully submitted,

JOHN PATTERSON

Attorney General of Alabama

EDMON L. RINEHART

Assistant Attorney General of
Alabama

Attorneys for Respondent

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 ~~11~~¹² day of October 1957, I served copies of the foregoing response to motion for leave to file brief as amici curiae, on Leo Pfeffer, 15 East 84 Street, New York 28, New York, by placing three 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 response to motion for leave to file brief as amici curiae is presented in good faith and not for delay.


EDMON L. RINEHART

Assistant Attorney General of Alabama
Judicial Building
Montgomery, Alabama